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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 21.

THE CHICAGO, DANVILLE & VINCENNES RAILROAD COMPANY, JAMES W. ELWELL, AND R. BIDDLE ROBERTS, APPELLANTS,

VS.

WILLIAM R. FOSDICK, JAMES D. FISH, FREDERICK W. HINDEKOPER, THOMAS W. SHANNON, AND JOHN M. DENISON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED APRIL 9, 1879.

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1 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court of the United States for the northern district of Illinois.

WILLIAM R. FOSDICK AND JAMES D. FISH
vs.
THE CHICAGO, DANVILLE AND VINCENNES Railroad Company, James W. Elwell, and R. Biddle Roberts.
In chancery.

To the honorable the judges of said court, in chancery sitting:

The petition of R. Biddle Roberts, one of the respondents in the above-entitled cause, respectfully showeth to this honorable court that he is impleaded in said cause, by reason of his having been made a trustee under and by virtue of a certain chattel mortgage, executed by the said Chicago, Danville and Vincennes Railroad Company to the said R. Biddle Roberts, on the twelfth day of January, A. D. 1875, and duly recorded in the counties of Vermillion, Iroquois, Kankakee, Will, and Cook, in the State of Illinois, a copy of which chattel mortgage is herewith appended marked Exhibit A, to which petitioner craves leave to refer, and prays may be taken and regarded as part of this petition.

That during the progress of this cause your petitioner duly filed
2 his answer to the bill of complaint herein, and became and was in
all respects a party in court in said proceeding. That no proof was made on the part of the complainant in relation to the said chattel mortgage, or the condition of the chattels thereunder held; and that in the final decree of this honorable court no mention whatever is made of this defendant, nor is any disposition made of the rights of the parties holding the bonds issued under and by virtue of said chattel mortgage, nor is your said petitioner as said trustee by any adjudication relieved or discharged from the said trust, but he is legally ignored. Yet by virtue of the same decree all of the chattels named and described in the said chattel mortgage are ordered to be sold, and no portion of the product of such sale of such chattels is decreed to your petitioner or his cestuis que trust, but is directed to be paid to other parties.

Your petitioner further represents that by virtue of the constitution and laws of the State of Illinois, the said mortgage being upon personal chattels exclusively, will expire on the twelfth day of January, A. D. 1877, on which day it will become the duty of your petitioner to take possession of the property therein described, and to sell and dispose of the same as therein provided for and apply the proceeds of such sale in the way therein directed.

And your petitioner further represents that the owners of the said bonds,
mainly non-residents of the State of Illinois, have formally
3 called upon your petitioner to discharge his duty in that behalf
and to take possession of said property, disposing of the same for their benefit according to the tenor and effect of said chattel mortgage.

Your petitioner therefore respectfully prays this honorable court to amend the decree in this behalf in said cause, so as to strike out of the same the property held by virtue of the chattel mortgage aforesaid, now, as your petitioner is informed and believes, in possession of the receiver appointed by this court, and that the court will make such other and further order as will protect your petitioner in all his rights herein, and those of his cestuis que trust.

And as in duty bound, &c.

R. BIDDLE ROBERTS, *Trustee.*

Exhibit A.

This indenture, made the twelfth day of January, A. D. one thousand eight hundred and seventy-five, between The Chicago, Danville and Vincennes Railroad Company, a corporation existing under the laws of the States of Illinois and Indiana, party of the first part, and R. Biddle Roberts, of the city of Chicago and State of Illinois, trustee, upon certain trusts hereinafter specified and provided, the party of the second part, witnesseth as follows:

That the party of the first part, in order to pay off and discharge
4 certain debts and obligations incurred in the construction, equipment, and operating of said railroad, and to enable them to conduct, operate, and continue the business of said company, and also in pursuance of the resolutions of said company, passed the second day of January, A. D. 1875, a copy of which resolutions is hereto annexed, marked A, and forming part of this indenture, have made and issued their several bonds or obligations, all having even date herewith, and which are numbered, and are of the several denominations following, to wit: Nine hundred and fifteen bonds of one thousand dollars each, numbered from number 1 to 915, both inclusive; one hundred bonds of five hundred dollars each, numbered from number 916 to 1015, both inclusive; one hundred bonds of two hundred and fifty dollars each, numbered from number 1016 to 1115, both inclusive, and one hundred bonds of one hundred dollars each, numbered from 1116 to 1215, both inclusive, and each of said bonds being made payable to said party of the second part or bearer, at the said company's office, in the city of Chicago, on the twelfth day of January, A. D. 1877, with interest thereon at the rate of seven per cent. per annum from the date thereof.

Now this indenture witnesseth, that the said party of the first part, in order to secure the payment of the said several bonds hereinbefore mentioned, as they respectively fall due in the hands of the bona fide
5 holders thereof, and the interest thereon, and in consideration of the sum of one dollar, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, assign, release, convey, and confirm and transfer and set over unto the said party of the second part, trustee as aforesaid, and his successor or assigns, all the locomotives, passenger cars, baggage cars, freight cars, shop tools, and all other machinery and personal property now owned by or in the possession of said party of the first part, and more particularly named and described in the schedule hereto annexed, marked B, and which said schedule forms a part of this inden-

ture, subject, however, to such prior liens as there may be upon the same, or upon any portion thereof, if any such prior liens exist.

To have and to hold the same to the said party of the second part, or to his successor or assigns forever. And it is hereby further mutually declared, granted, and agreed by the said company, party of the first part, and said party of the second part, trustee, representing the rights and interests in the securities of the parties taking or holding the said bonds or obligations in the form and manner following, viz: That if the said party of the first part shall well and faithfully pay the said principal sum of said bonds on the day when the same are made payable by this in-
6 denture, as above mentioned, according to the true intent and meaning thereof, with the interest due thereon, or shall deliver up, canceled, to the said party of the second part, all of the said bonds mentioned herein, then these presents shall cease and determine; that until default shall have been made by the party of the first part, in the payment of the principal or interest of the said bonds, or some of them, or until default shall have been made in respect to something herein required to be done by the said party of the first part, the said party of the first part shall be suffered and permitted to possess, use, occupy, manage, and operate all of the chattels and property mentioned herein, and to renew and repair the same, and every part thereof, and take and receive and use the tolls, rents, issues, incomes, and profits thereof, and dispose of the same in any manner not inconsistent with this instrument.

But if default shall be made by the party of the first part, in the payment of said bonds or obligations at the time they shall fall due, according to the true intent and meaning thereof, then it shall be lawful for the said party of the second part, or his successors or assigns, and it shall be his or their duty, and they are hereby authorised and empowered either in person, or by attorney, or by agents, to take possession of the said chattels, and all other articles mentioned in the said annexed schedule,
7 and to sell or dispose of the same, or any part thereof, at public auction, at the best price he can obtain for the same, according to the statute in such cases made and provided, and out of the proceeds arising from such sale, to defray the expenses of such sale and his own just and lawful charges, and then pay over the proceeds to and amongst the parties holding the said bonds or obligations so far as may be necessary to pay the amount then due and in arrear upon the same, and the balance of the proceeds (if any there be) to be paid over to the said parties of the first part or their assigns.

In witness whereof the said Chicago, Danville and Vincennes Railroad Company, the party of the first part, has caused these presents to be executed and signed by the president of their company in their behalf and for the said company, and has caused the corporate seal of the company to be hereto affixed the day and year first above written. And the party of the second part has hereunto set his hand and affixed his seal the same day and year aforesaid.

{ SEAL OF C., D. AND V. R. R. CO. } CHICAGO, DANVILLE AND VINCENNES RAILROAD COMPANY,
By W. D. JUDSON, *President.*
R. BIDDLE ROBERTS, *Trustee.* [SEAL.]

STATE OF ILLINOIS,
County of Cook, ss:

8 This chattel mortgage was acknowledged before me by W. D. Judson, president of the Chicago, Danville and Vincennes Railroad Company, and R. Biddle Roberts, the said trustee, and entered by me this thirteenth day of January, A. D. 1875.

J. CHARLES HAINES,
Justice of the Peace.

EXHIBIT A.

"Resolved, That an issue of bonds shall be made by the company, amounting in the aggregate to a sum not exceeding one million of dollars, in such denominations as the officers of the company may deem advisable, payable in not exceeding two years from date of issue, either with or without interest, and that the said bonds be secured by a chattel mortgage to a trustee or trustees upon all the locomotives, passenger cars, baggage and freight cars, and all other machinery and shop tools and other personal property now owned by or in the possession of the company, subject to such prior liens as there may be upon the same, in favor of the bondholders of the company or any other parties if any such prior liens exist. And that the president of the company be and he hereby is authorized, directed, and fully empowered to make and sign and execute and seal with the corporate seal of the company the said chattel mort-
9 gage or deed of trust, and to acknowledge the same for and on behalf of this company for record, and on the acceptance of said trust by the trustee or trustees to cause the same to be recorded according to law, and thereupon to make, sign, execute, and prepare the said bonds for issue, and to use and dispose of the said bonds to settle and pay, or to secure any portion of the indebtedness of the company."

EXHIBIT B.

Thirty-four (34) locomotive engines numbered from No. 1 to 34, both inclusive.

Three hundred and seventy-six (376) Gondola coal cars numbered from 1 to 376, both inclusive.

One hundred and fifteen (115) stock cars numbered from number 501 to 615, both inclusive.

One hundred and fifteen (115) box cars numbered from number 1001 to 1115, both inclusive.

Two hundred and twenty-five (225) Gondola coal cars numbered from number 0141 to 0365, both inclusive.

Six (6) caboose cars numbered from number 1 to 6, both inclusive.

Four (4) baggage cars numbered from number 1 to 4, both inclusive.

Three (3) mail and passenger cars numbered from number 1 to 3, both inclusive.

Eight (8) passenger coaches numbered from number 1 to 8, both inclusive.

10 The following machinery and tools in the machine shops at Danville, Vermillion County, Illinois:

1 44-inch iron planer.
1 30 " do do.
2 14 " shaping machines.
1 slotting machine.
1 lathe, 34-inch swing.
1 do. 16 " do.
1 do. 20 " do.
1 do. 25 " do.
1 axle centering lathe.
1 hydraulic wheel press.
1 driving-wheel lathe.
1 car-wheel borer.
1 boiler maker's shears.
(boiler makers.)
1 do. do. punch.
1 hydraulic crank-pin press.
1 steam hammer.
1 bolt cutter.
1 small emery grinder.
1 axle lathe.
1 drilling press.
1 drilling press.
1 stationary steam engine.

State of Illinois,
Cook County, ss:

No. 9946. Recorded Jan. 16, A. D., 1875, at 12 o'clock m., in book 469 of records, page 242.

JAS. STEWART, *Recorder.*

11 State of Illinois,
Vermillion County, ss:

I certify that this instrument was filed for record this January 14th, A. D. 1875, at the hour of 8¼ o'clock a m., and duly recorded in book No. 4 of chattel mortgages, at pages 33, 34, 35, & 36, & compared.

{ SEAL OF CIRCUIT COURT, VERMILLION COUNTY. }
GEO. DILLON, *Clk.*,
Pr. J. W. LOWELL, *Dep.*

State of Illinois,
Iroquois County, ss:

42777. This instrument was filed for record January 14th, 1875, at 12.10 p. m., and recorded in book 102, page 45.

{ SEAL OF CIRCUIT COURT, IROQUOIS COUNTY. }
JOHN W. RIGGS,
Recorder.

State of Illinois,
Kankakee County, ss:

This instrument was filed for record on the 14th day of January, 1875. at 6 o'clock p. m., and duly recorded in book 75 of records, on page 40, No. 96301.

{ SEAL OF CIRCUIT COURT, KANKAKEE COUNTY. }
GEO. R. LATOURUEAU,
Recorder.

STATE OF ILLINOIS,
Will County, ss:

I certify that this instrument was filed for record on the 15th day of January, A. D. 1875, at 11 o'clock a. m., and duly recorded in book 153, at page .

{ SEAL OF CIRCUIT COURT, WILL COUNTY. }

CONRAD TATGE,
Recorder.

12 (Endorsed:) Filed Jan'y 9th, 1877. Wm. H. Bradley, clerk.

13 Circuit court of the U. S., northern district of Illinois.

WILLIAM R. FOSDICK AND JAMES D. FISH,
against.
THE CHICAGO, DANVILLE AND VINCENNES Railroad Co. and others.
} Chancery.

Your petitioners, Frederick W. Huidekoper, Thomas W. Shannon, and John N. Dennison, respectfully show:

1. That upon the 7th day of February, 1877, they became the accepted bidders at the master's sale under the decree in this cause of all and singular the Illinois division of The Chicago, Danville and Vincennes Railroad, for the sum of $1,450,000 in gold, and they upon the same day paid to the master the one-fourth of said bid in cash, as required by the decree.

2. On the 9th day of February, 1877, they also became the accepted bidders at the master's sale in Indiana of all and singular the Indiana division of said railroad for the sum of $115,000, and they have paid in cash the one-fourth of said sum in cash.

3. Petitioners show that besides being the bidders at such sales, they are the owners and holders of 2315 Illinois division first mortgage bonds, and 1207 Indiana division first mortgage bonds, and as such holders are entitled to receive nearly the entire bid on the surrender of their said bonds. And they stand ready to produce and surrender their bonds and coupons as directed by the court. 14

4. Petitioners further represent that the adjudicated preferred claims against the property amount to about $100,000, and that after the payment of such amount, and costs, and expenses, your petitioners will be entitled to nearly the entire amount of said bid remaining, and they therefore pray that after a determination by the master of the probable amount of costs, expenses, and preferred claims, that the pro rata share coming to the bondholders be stated, and that your petitioners be allowed at once to pay and discharge said bid by surrendering their bonds and coupons for their proportionate share, and petitioners will pay the cash for the remaining portion of such bonds unsurrendered, and your petitioners pray that upon such payment and adjustment of said bid a conveyance be executed and delivered to them at once, and they be let into immediate possession of the property so purchased by them.

And petitioners pray for a confirmation of said sale, and all other relief.

F. W. HUIDEKOPER.
T. W. SHANNON.
JNO. M. DENISON.

15 Subscribed and sworn to before me Feb. 17, 1877.

H. W. BISHOP,
U. S. Com.

(Endorsed:) Filed February 17, 1877. Wm. H. Bradley, clerk.

16 In the circuit court of the United States, for the northern district of Illinois.

William R. Fosdick and James D. Fish, complainants, *vs.* The Chicago, Danville and Vincennes Railroad Company, James Elwell, and R. Biddle Roberts, defendants.	In chancery.

Master's report of sale.

To the honorable the judges of said court:

The undersigned, Henry W. Bishop, as master in chancery of said court, respectfully reports:

That it was in a decree of the said court entered in the above-entitled cause, on the fifth (5th) day of December, A. D. 1876 (one thousand eight hundred and seventy-six), among other things ordered, adjudged, and decreed, that the said defendant, The Chicago, Danville and Vincennes Railroad Company, pay or cause to be paid, to the said complainants, as trustees, for the holders of the Illinois division bonds and coupons, the several sums of money with interest thereon as thereinbefore found to be due and owing within twenty (20) days from and after the entry of the said decree, and in default thereof that all of the said
17 railroad premises, property, and franchises described in the trust deed dated March 10th, A. D. 1869, and thereinbefore described as the Illinois division of said railroad, together with all the rights, franchises, property, and appurtenances thereof, and the rolling-stock thereto belonging and therein particularly scheduled and set forth, and all the contract rights of said company for the use of tracks of other railroads between Thornton and Chicago, and all other rights, privileges, and appurtenances of the said Illinois division of said railroad as the same was thereinafter specifically scheduled, and all the right, title, interest, and equity of redemption of the said Chicago, Danville and Vincennes Railroad Company therein should be sold as an entirety, by Henry W. Bishop, the master in chancery of this court, at public auction, to the highest and best bidder, for cash therefor, and payable as thereinafter provided, at the west door of the Republic Life Insurance Company building, in the city of Chicago in the State of Illinois, after having first given notice of the time and place and terms of sale, and a description of the property to be sold, by advertisement thereof in some public newspaper published in the city of Chicago for the space of thirty (30) days prior to such day of sale The terms of such sale should be as follows: Twenty-five (25) per cent. of the purchase-money to be paid to said master in chancery in cash at
18 the time of sale. One-half of the balance of the purchase-money to be paid to said master in cash within three months from the

day of sale, and the remainder to be paid to said master in cash within six months from said day of sale.

And it was further ordered, adjudged, and decreed that the said master make report of said sale to this court, and that upon confirmation thereof and the full payment of the whole of the purchase-money, that the said Bishop, as master in chancery of this court, should convey as therein mentioned.

And it was further ordered, adjudged, and decreed that the said master master should, out of the proceeds of such sale—

First. Pay all the costs of this suit and the costs and expenses of such sale, including the fees of said master.

Second. Pay all expenses and compensation of the said complainants as trustees of the said bond and coupon holders, including attorneys' fees incurred in the course of their trust and in the prosecution or defense of any and all suits brought by or against them as trustees, which should be allowed by or under the order of this court, and also all other costs and attorneys' fees which should be allowed by or under the order of this court in favor of the parties to this suit or intervening petitioners therein.

Third. Pay the balance to the clerk of this court.

19 That in accordance with the said decree of the said court, the undersigned, as said master in chancery, advertised the said premises and property for sale at public auction, to the highest bidder, for cash, in the Chicago Tribune, a daily newspaper of general circulation, printed and published in the city of Chicago, county of Cook and State of Illinois, the date of the first paper containing the said advertisement being the third day of January, A. D. 1877, and the date of the last paper containing the same being the fifth day of February, A. D. 1877, the said advertisement having been inserted for thirty-four times previous to the said day of sale, as appears by a certified copy of the said advertisement and certificate of publication hereto attached and made a part hereof.

That at the hour, day, and place fixed and mentioned in the said advertisement, to wit, at the hour of ten (10) o'clock in the forenoon of the seventh (7th) day of February, A. D. 1877 (one thousand eight hundred and seventy-seven), at the west door, on La Salle street, of the Republic Life Insurance building, in Chicago, Illinois, the undersigned, as such master in chancery, did offer the premises and property in the said advertisement and decree mentioned, and described as all and singular the Illinois division of the said Chicago, Danville and Vincennes Railroad Company, 20 being about 108 miles in length, together with terminal tracks in Chicago, about seven and eight-tenths ($7\frac{8}{10}$) miles in length, and a branch from Bismarck to the Indiana State line, about four and six-tenths ($4\frac{6}{10}$) miles in length, together with all the rights, franchises, and appurtenances thereto pertaining and the rolling stock thereto belonging, and all the contract rights of said company, and all the right, title, and equity of redemption of said Chicago, Danville and Vincennes Railroad Company, all the said property, appurtenances, and franchises to be sold as an entirety, and the same are specifically described and scheduled in the said decree as follows:

1. The main line of the Chicago, Danville and Vincennes Railroad from Dalton, in the county of Cook, southerly to Danville, in the county of Vermillion, a distance of one hundred and eight (108) miles, and a branch line

from Bismarck, in said Vermillion County, southeasterly to the east line of the State of Illinois, a distance of four and six-tenths ($4\frac{6}{10}$) miles, together with the right of way, station, and other grounds, grading, bridges, culverts, tracks, shops, including fixtures and tools, stations, and other buildings and structures, fences, and appurtenances thereof, and all wood, coal, and other supplies for the use and operation thereof.

21 2. The contract rights of the said Chicago, Danville and Vincennes Railroad Company to the use of the tracks and appurtenances of the Chicago and Southern Railroad Company, and the tracks and appurtenances of the Pittsburgh, Cincinnati and St. Louis Railway Company from Thornton, in Cook County, to and into the city of Chicago.

3. The terminal tracks, sidings, switches, and appurtenances of said Chicago, Danville and Vincennes Railroad Company at and near said city of Chicago, whether the same are situate on the grounds and rights of way of said company, or otherwise, aggregating a length of seven and eight-tenths ($7\frac{8}{10}$) miles, together with all rights of way or contract therefor, or rights to have and maintain such tracks or any part thereof, and all buildings, structures, erections, and appurtenances thereof, including a water tank, and an undivided interest in an engine house of fourteen (14) stalls, situate on grounds of the said Chicago and Southern Railroad Company, adjacent to the city of Chicago, and all wood, coal, and other supplies, tools and fixtures for the use of said Chicago, Danville and Vincennes Railroad Company, and situate or used within said city of Chicago, or along the line of said Chicago and Southern Railroad Company, or said Pittsburgh, Cincinnati and St. Louis Railway Company, north of said Thornton.

4. The south eighteen (18) feet of lot twelve (12) and lots thir-
22 teen (13) and sixteen (16), in block thirteen (13) and lot six (6),
block nine (9), Carpenter's addition to Chicago; also, lot twenty-four
(24), in block seven (7), Carpenter's addition to Chicago, subject to a lien of
about twenty-five hundred dollars.

Lots twenty-nine (29), thirty (30), and thirty-two (32), and a leasehold interest in lot thirty-one (31), all in block four (4), Magee and High's addition to Chicago, with the tracks and buildings and fixtures thereon, said lots twenty-nine (29), thirty (30), and thirty-two (32) being subject to a first lien of about twenty-three hundred dollars ($2,300).

5. Twenty-five (25) locomotives, numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 12, 13, 14, 15, 19, 20, 21, 22, 24, 30, 31, 32, 33, and 34.

Six (6) passenger cars, numbered 3, 4, 5, 6, 7, and 8.

Three (3) baggage cars, numbered 2, 3, and 4.

Three (3) mail cars, numbered 1, 3, and 4.

Eight (8) caboose cars, numbered 3, 4, 5, 6, 7, 8, 9, 10.

One hundred and sixty-one (161) box cars, being those bearing numbers between 564 to 615, both inclusive, and 1001 to 1115, both inclusive.

Eighty-five (85) box cars (Adams), being those bearing numbers between 1136 to 1220, both inclusive.

Three hundred and eighteen (318) coal cars, being those bearing numbers between 1 to 100, both inclusive, and 145 to 376, both inclusive.

One hundred and eighteen (118) block coal cars, being those bearing numbers between 01 to 0118, both inclusive.

23 Thirty-four (34) stock cars, being those bearing numbers between 501 to 534, both inclusive.

6. All of the franchises of the said Chicago, Danville and Vincennes Railroad Company within the State of Illinois, and all of the property and premises within said State other than that in this schedule specifically described, in which the said railroad company has any interest, held by it for use in the maintenance and operation of the said line of railroad, for sale at public auction to the highest bidder, having first stated that the sale would be made for gold and subject to all taxes, and then and there struck off and sold the same to F. W. Huidekoper, T. W. Shannon, and J. M. Denison for the sum of one million four hundred and fifty thousand dollars ($1,450,000), that sum being the highest and best sum bid for the same, and they being the highest and best bidders therefor.

And I further report that there has been paid to me as such master the sum of three hundred and sixty-two thousand and five hundred dollars in gold, being one-fourth of the amount of the said bid, as provided in the said decree, and which is held by me subject to the further order of this court.

All of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the
United States for the Northern District of Illinois.

Dated Chicago, February 10th, 1877.

24 LEGAL.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court thereof.

WILLIAM R. FOSDICK AND JAMES D. FISH, complainants, *vs.* THE CHICAGO, DANVILLE AND VINCENNES RAILROAD Company, James Elwell, and R. Biddle Roberts, defendants.	In chancery.

Master's sale.

Notice is hereby given that by virtue of a decree of foreclosure of the circuit court of the United States for the northern district of Illinois, rendered on December 5, A. D. 1876, in a certain suit in chancery, wherein William R. Fosdick and James D. Fish are complainants, and the Chicago, Danville and Vincennes Railroad Company and others are defendants, the undersigned, master in chancery of said court, will sell at public auction, to the highest bidder, for cash, all and singular the Illinois division of the said Chicago, Danville and Vincennes Railroad Company, being about 108 miles in length, together with terminal tracks in Chicago, about seven and eight-tenths ($7\frac{8}{10}$) miles in length, and a branch from
Bismarck to the Indiana State line, about four and six-tenths ($4\frac{6}{10}$)
25 miles in length, together with all the rights, franchises, and appurtenances thereto pertaining, and the rolling-stock thereto belonging,
and all the contract rights of said company, and all the right, title, and

equity of redemption of said Chicago, Danville and Vincennes Railroad Company; all the said property, appurtenances, and franchises to be sold as an entirety, and the same are specifically described and scheduled in the said decree, as follows:

1. The main line of the Chicago, Danville and Vincennes Railroad, from Dalton, in the county of Cook, southerly to Danville, in the county of Vermillion, a distance of one hundred and eight (108) miles; and a branch line from Bismarck, in said Vermillion County, southeasterly to the east line of the State of Illinois, a distance of four and six-tenths ($4\frac{6}{10}$ miles, together with the right of way, station, and other grounds, grading, bridges, culverts, tracks, shops, including fixtures and tools, stations, and other buildings and structures, fences, and appurtenances thereof, and all wood, coal, and other supplies for the use and operation thereof.

2. The contract rights of the said Chicago, Danville and Vincennes Railroad Company, to the use of the tracks and appurtenances of the Chicago and Southern Railroad Company, and the tracks and appurtenances of the Pittsburgh, Cincinnati and St. Louis Railway Company, from Thornton, in Cook County, to and into the city of Chicago.

26 3. The terminal tracks, sidings, switches, and appurtenances of said Chicago, Danville and Vincennes Railroad Company, at and near said city of Chicago, whether the same are situate on the grounds and rights of way of said company or otherwise, aggregating a length of seven and eight-tenths ($7\frac{8}{10}$) miles, together with all rights of way or contracts therefor, or rights to have and maintain such tracks, or any part thereof, and all buildings, structures, erections, and appurtenances thereof, including a water-tank and an undivided interest in an engine-house of fourteen (14) stalls, situate on grounds of the said Chicago and Southern Railroad Company, adjacent to the city of Chicago, and all wood, coal, and other supplies, tools, and fixtures for the use of said Chicago, Danville and Vincennes Railroad Company, and situate or used within said city of Chicago, or along the line of said Chicago and Southern Railroad Company, or said Pittsburgh, Cincinnati and St. Louis Railway Company, north of said Thornton.

4. The south eighteen (18) feet of lot twelve (12) and lots thirteen (13) and sixteen (16), in block thirteen (13), and lot six (6), in block nine (9), Carpenter's addition to Chicago; also, lot twenty-four (24), in block seven (7), Carpenter's addition to Chicago, subject to a lien of about twenty-five hundred dollars.

Lots twenty-nine (29), thirty (30), and thirty-two (32), and a
27 leasehold interest in lot thirty-one (31), all in block four (4), Magee
and High's addition to Chicago, with the tracks and buildings and fixtures thereon, said lots twenty-nine (29), thirty (30), and thirty-two (32) being subject to a first lien of about twenty-three hundred dollars ($2,300).

5. Twenty-five (25) locomotives, numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19, 20, 21, 22, 24, 30, 31, 32, 33, and 34.

Six (6) passenger cars, numbered 3, 4, 5, 6, 7, and 8.

Three (3) baggage cars, numbered 2, 3, and 4.

Three (3) mail cars, numbered 1, 3, and 4.

Eight (8) caboose cars, numbered 3, 4, 5, 6, 7, 8, 9, 10.

One hundred and sixty-one (161) box cars, being those bearing numbers between 564 to 615, both inclusive, and 1001 to 1115, both inclusive.

Eighty-five (85) box cars (Adams), being those bearing numbers between 1136 to 1220, both inclusive.

Three hundred and eighteen (318) coal cars, being those bearing numbers between 1 to 100, both inclusive, and 145 to 376, both inclusive.

One hundred and eighteen (118) block coal cars, being those bearing numbers between 01 to 0118, both inclusive.

Thirty-four (34) stock cars, being those bearing numbers between 501 to 534, both inclusive.

28 6. All of the franchises of the said Chicago, Danville and Vincennes Railroad Company, within the State of Illinois, and all of the property and premises within said State other than that in this schedule specifically described, in which the said railroad company has any interest held by it for use in the maintenance and operation of the said line of railroad.

Terms, etc.—The said sale will be at the hour of 10 o'clock, a. m., of the seventh (7th) day of February, A. D. 1877, at the west door of the Republic Life Insurance Building, on La Salle st., in Chicago, Illinois. One-quarter of the bid is to be paid in cash at the time of sale, and one-half the balance to be paid in cash in three months, and the remainder to be paid in cash in six months from the day of sale. On the confirmation of the sale and the full payment of the purchase-money a conveyance will be made to the purchaser, which will entitle him to the possession of all the property so directed to be sold.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

January 2, 1877.

Lawrence, Campbell and Lawrence,
Complainants' Solicitors.

29 Joseph Medill, of the city of Chicago, in the county of Cook, State of Illinois, doth hereby certify that he is vice-president of the Tribune Company, and duly authorized to sign for said company, publishers of The Chicago Tribune, a daily newspaper of general circulation, published in said county, and that the notice of master's sale, of which annexed is a true copy, was printed and published in the regular edition and issue of said Chicago Tribune for thirty-four times, to wit: The first publication being on the third day of January, 1877, and last on the fifth day of February, 1877.

Dated at Chicago, Ill., this sixth day of February, 1877.

J. MEDILL.

Sworn and subscribed to before me this sixth day of February, 1877.

[SEAL.] W. L. OGDEN,
Notary Public.

(Endorsed:) Filed February 17, 1877. Wm. H. Bradley, clerk.

30 In the circuit court of the United States for the northern district of Illinois.

WILLIAM R. FOSDICK AND JAMES D. FISH
vs.
CHICAGO, DANVILLE AND VINCENNES RAILROAD Company, James W. Elwell et al.
} In chancery.

The answer of James W. Elwell, one of the defendants in said cause, to the intervening petition of Frederick W. Huidekoper, Thomas W. Shannon, and John N. Dennison, filed herein on the 17th day of February, A. D. 1877, respectfully shows unto your honor:

That the said defendant was made a party defendant to said bill of complaint, and that he filed his answer thereto, together with his certain cross-bill, as shown by the record of said cause.

That by said bill and cross-bill it is made to appear that on the first day of January, A. D. 1873, the said defendant the said Chicago, Danville and Vincennes Railroad Company made, executed, and delivered to the said Elwell and the said James D. Fish its certain deed of trust, whereby it conveyed to the said Elwell and Fish all its property, both real and
personal, situate in the State' of Illinois and Indiana, together with
31 the franchises of said company, for the purpose of securing prin-
cipal and interest of an issue of bonds of said company, amounting, in the aggregate, to the sum of one million dollars.

It is further shown by said bill and cross-bill the said Fish had resigned his said trust, and that the said Elwell was sole trustee under said deed.

And the said defendant further shows that, by the order of said court, the said cross-bill and the issues thereunder were referred to the master in chancery of said court, with directions to hear proof and report thereon.

That proof by the said Elwell was submitted to the said master of the execution of said deed, and that the same had been duly recorded in each and every county in the States of Indiana and Illinois through which the road of said railroad company passes.

That of said bonds the entire amount had been issued by said company; that no interest had been paid, except upon a small amount thereof, and that all of said bonds are valid and subsisting liens upon all the property conveyed by said deed, and that said master so reported to said court, prior to the entry of the final decree in said cause; but the said de-
fendant says that his rights and equities under his said cross-bill
32 and said report have not yet been decreed, adjudged, or determined
by said court.

The said defendant, further answering, says that he has no knowledge of the number of bonds of either division of said road now held by said petitioners, nor of the amount of unpaid adjudicated claims that have priority of lien over said bonds, nor of the amount of costs, fees, or other expenses first to be paid out of said fund so bid by the petitioners for said property; but the defendant respectfully shows that by the terms of said decree the purchaser or purchasers at said sale are required to pay to the master the full amount of their bid, in cash, within the time fixed and limited by the terms of said decree.

The said defendant, further answering, says that whether said bonds are received as prayed for, or if the full amount of the petitioners' said bid shall be immediately paid the master, in gold, that in neither case can the master lawfully make a deed or conveyance of said property to said petitioners until the expiration of fifteen months from the date of said sale.

The said defendant respectfully shows unto your honor that the said Chicago, Danville and Vincennes Railroad Company is a corporation created under and by virtue of the laws of the State of Illinois; 33 that the said mortgage to the complainants, and the bonds issued thereunder, were executed in said State, and that the property conveyed by said mortgage is situate wholly within said State of Illinois; that at the time of the execution of said mortgage and bonds there was, and now is, in full force, operative and binding, a statute providing, among other things, that when any real estate shall be sold by virtue of any execution, judgment, or decree of foreclosure it shall be the duty of the sheriff or master in chancery, instead of executing a deed for the premises sold, to give the purchasers a certificate describing the premises purchased, the amount bid, and when such purchaser shall be entitled to a deed if such premises are not redeemed, and that under said law the said defendant, his grantees, or any person interested in said premises as grantees or mortgagees, have the lawful right to redeem said premises upon a compliance with the terms and conditions of said statute, and that by the terms thereof such right of redemption in favor of such parties and judgment creditors does not lapse until the expiration of fifteen months from the date of said master's sale, to wit, from the 7th day of February, A. D. 1877.

And the defendant respectfully shows that under and by virtue of said laws he has the lawful right to redeem the property so sold for the 34 use and benefit of his cestuis que trust, at any time before the expiration of twelve months from the date of said sale by the payment to said master the amount the said petitioners' bid for the same, together with interest thereon at the rate of ten per centum per annum.

Wherefore said defendant prays that the rights so reserved be not embarrassed or in any manner interfered with by the execution of any conveyance by the said master to the petitioners, and that the said master be directed to execute and deliver to the petitioners a certificate of purchase of said premises as by the statute in such case made and provided.

JAMES W. ELWELL,
By E. WALKER, *Solicitor.*

(Endorsed:) Filed February 23, 1877. Wm. H. Bradley, clerk.

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35 United States circuit court, northern district of Illinois.

THURSDAY, *April* 12, A. D. 1877.

Present, Hon. Thomas Drummond, judge.

WILLIAM R. FOSDICK AND JAMES D. FISH
v.
THE CHICAGO, DANVILLE AND VINCENNES Railroad Company et al. } In chancery.

It appearing to the satisfaction of the court, from the report of the master made and filed on the petition of the purchasers, Frederic W. Huidekoper, Thomas W. Shannon, and John M. Denison, that there has been paid to said master on said sale three hundred and sixty-two thousand five hundred dollars ($362,500.00) in gold, that the said purchasers have also proven up before said master two thousand three hundred and twenty-eight (2,328) of the two thousand five hundred (2,500) first mortgage bonds of the Illinois division of the Chicago, Danville and Vincennes Railroad Company, together with the coupons and certificates of indebtedness or convertible mortgage bonds thereto attached and belonging;

And it further appearing from said report that there remains unpaid of the several preferred claims heretofore allowed by this court not
36 to exceed one hundred thousand dollars ($100,000.00), and that such sum of three hundred and sixty-two thousand five hundred dollars ($362,500.00) in gold, paid into court, will more than satisfy all the preferred claims, and the costs and expenses of the cause, and allowances to the master, trustees, and their solicitors, and also pay the pro rata share due on the amount of the bid unto the holders of the one hundred and seventy-two first mortgage bonds, and their coupons and certificates of indebtedness other than those held and offered now to be surrendered on their said bid by the purchasers:

It is therefore ordered that the said master's report be confirmed, and that the surrender unto him by said purchasers of the two thousand three hundred and twenty-eight (2,328) first mortgage Illinois division bonds of the Chicago, Danville and Vincennes Railroad Company, together with their accompanying coupons and certificates of indebtedness or convertible mortgage bonds, as specified in said master's report, the said Henry W. Bishop, master in chancery, do make, execute, acknowledge, and deliver unto said Frederic W. Huidekoper, Thomas W. Shannon, and John M. Denison a good and sufficient deed, conveying to them in fee-simple all and singular the property rights and franchises heretofore sold by him under the decree of this court herein.

37 And on the delivery of such conveyance as aforesaid the said purchasers shall be let into possession of said premises and franchises so conveyed to them, and the receiver of this court herein is hereby directed upon exhibition to him of such master's deed to deliver over the possession to said purchasers of all and singular the Illinois division of said Chicago, Danville and Vincennes Railroad Company, together with all its appurtenances, equipments, and property of every kind and description.

And it is further ordered, that out of the moneys in court the clerk be directed to forthwith pay all and singular the claims heretofore allowed by this court against the fund, taking proper vouchers therefor, and that he do also upon demand pay in gold coin a dividend to the one hundred and seventy-two (172) outstanding first mortgage bonds and their accompanying coupons and certificates of indebtedness, at and after the rate of five hundred and twenty dollars ($520) in gold coin on each of said one hundred and seventy-two (172) bonds, with the coupons and certificates of indebtedness thereto belonging, all such dividend payments to be made in accordance with the terms of the decree of December fifth, A. D. 1876, as to priorities and deductions for payments made on any such coupons or certificates of indebtedness since October, A. D. 1873.

38 And the remainder of the fund in court shall be reserved to abide the further direction of the court as to its distribution.

39 United States circuit court, northern district of Illinois.

WILLIAM R. FOSDICK AND JAMES D. FISH
vs.
THE CHICAGO, DANVILLE AND VINCENNES Railroad Company, James W. Elwell, and R. Biddle Roberts.

To the honorable the judges of said court in chancery sitting.

The said Chicago, Danville and Vincennes Railroad Company, James W. Elwell, and R. Biddle Roberts, defendants in the above entitled cause, respectfully pray an appeal to the Supreme Court of the United States from the decree or decretal order entered in said cause, as follows:

From the decree entered April 12, 1877, confirming the report of the sale of the property of the defendant railroad company.

From the decree of April 16, 1877, ordering the delivery of the deed and possession of the property to the purchasers, Frederick W. Huidekoper, Thomas W. Shannon, and John M. Dennison.

From the decree entered in said cause on the 19th day of November, 1877, in favor of Frederick W. Huidekoper, Thomas W. Shannon, and John M. Dennison, and against the said Chicago, Danville and Vincennes Railroad Company for the sum of $1,808,646,46.

40 And further pray that your honors fix the amount of security for costs of such appeal.

(Endorsed:) Filed March 26, 1879. Wm. H. Bradley, clerk.

41 In the circuit court of the United States for the northern district of Illinois.

WILLIAM R. FOSDICK AND JAMES D. FISH AND Frederick W. Huidekoper, Thomas W. Shannon, and John M. Dennison, petitioners and purchasers,
vs.
THE CHICAGO, DANVILLE AND VINCENNES Railroad Company, James W. Elwell, and R. Biddle Roberts.
} Bill.

Know all men by these presents, that we, The Chicago, Danville and Vincennes Railroad Company, James W. Elwell, and R. Biddle Roberts, as principals, and Charles F. Elwell, of the city of Brooklyn and State of New York, are held and firmly bound unto William R. Fosdick and James D. Fish, Frederick W. Huidekoper, Thomas W. Shannon, and John M. Denison, in the penal sum of one thousand dollars, to be paid to the said William R. Fosdick, James D. Fish, Frederick Huidekoper, Thomas W. Shannon, and John M. Denison, their executors or administrators, to which payment well and truly to be made we bind ourselves,

and each of us jointly and severally, and our successors, heirs, executors, and administrators firmly by these presents. Sealed with our seals
42 this eleventh day of March, A. D. 1879.

Whereas the above-named William R. Fosdick and James D. Fish, on the fifth day of December, A. D. 1876, obtained in said court a certain decree of foreclosure of mortgage, and for the sale of the property and premises therein described, from which said decree an appeal has heretofore been allowed and prosecuted; and whereas a decretal order was entered in said cause on the twelfth day of April, A. D. 1877, confirming the master's report of the sale of the property and premises described in said decree to the said Frederick W. Huidekoper, Thomas W. Shannon, and John M. Denison; and whereas on the sixteenth day of April, A. D. 1877, the said court, upon the petition of the said Frederick W. Huidekoper, Thomas W. Shannon, and John M. Denison, entered a certain other decretal order in said cause, ordering and decreeing the master's deed and the property therein described to be delivered to the said Frederick W. Huidekoper, Thomas W. Shannon, and John M. Denison; and whereas the said defendants, The Chicago, Danville and Vincennes Railroad Company, James W. Elwell and R. Biddle Roberts, have prosecuted an appeal from each of said decretal orders, so entered in said cause on the said twelfth and sixteenth days of April, A. D. 1877, to the
43 Supreme Court of the United States to reverse the said decretal orders and each of them:

Now therefore the condition of this obligation is such that if the above-named Chicago, Danville and Vincennes Railroad Company, James W. Elwell, and R. Biddle Roberts shall prosecute their said appeal to effect and answer all costs and damages if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

[SEAL.] CHICAGO, DANVILLE AND
VINCENNES RAILROAD COMPANY,
By W. D. JUDSON, *President.*

Signed and delivered in presence of—
A. T. CHUR.

JAS. W. ELWELL. [SEAL.]
CHAS. F. ELWELL. [SEAL.]
R. BIDDLE ROBERTS. [SEAL.]

STATE OF NEW YORK,
City and County of New York, ss:

On this tenth day of March, 1879, before me presently came William D. Judson, the president of the Chicago, Danville and Vincennes Railroad Company, with whom I am personally acquainted, and who, being by me duly sworn, did depose and say that he resided in the city of New York, State of New York; that he was the president of the said company; that he knew the corporate seal of the said company; that the seal
44 affixed to the foregoing instrument was such corporate seal; that it was affixed thereto by order of the board of directors of said

company, and that he signed his name thereto by like order, as president of said company.

[SEAL.] CHARLES P. LATTING,
Notary Public, N. Y. City and County.

STATE OF NEW YORK,
City and County of New York, ss:

On this eleventh day of March, 1877, before me personally came James W. Elwell and Charles F. Elwell, to me known to be the two individuals described in and who executed the foregoing bond, and they severally acknowledged to me that they executed the same for the purposes therein mentioned.

[SEAL.] PHILIP S. CLARK,
Notary Public, Kings County.

STATE OF NEW YORK,
City and County of New York, ss:

Charles F. Elwell, one of the subscribers to the foregoing bond, being
by me duly sworn, doth depose and say that he resides in the city of Brook-
lyn, county of Kings, and State of New York; that he is a freeholder
within the said State, and is worth the sum of two thousand dol-
45 lars over and above all his debts and liabilities, and exclusive of
property by law exempt from execution,

CHAS. F. ELWELL. [SEAL.]

Sworn to before me this eleventh day of March, 1879.

[SEAL.] PHILIP S. CLARK,
Notary Public, Kings County.

Form and amount of bond approved, but not conceding there is the right of appeal from the orders named.

THOMAS DRUMMOND.

MARCH 26, 1879.

(Endorsed:) Filed March 26, 1879. Wm. H. Bradley, clerk.

46 NORTHERN DISTRICT OF ILLINOIS, *sct.:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be true and complete copies of the petition of R. Biddle Roberts, filed January 9, A. D. 1877; of the petition of Frederick W. Huidekoper, Thomas W. Shannon, and John N. Dennison, filed February 17, A. D. 1877; of the master's report of sale, filed February 17, A. D. 1877; of the answer of James W. Elwell, filed Februry 23, A. D. 1871; of the order of court entered of record April 12, A. D. 1877; of the prayer for appeal filed March 26, A. D. 1879, and of the appeal bond filed March 26, A. D. 1879, in the cause wherein William R. Fosdick and James D. Fish are the complainants and The Chicago, Danville and Vincennes Railroad Company et al. are the defendants, as the same appear from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this second day of April, A. D. 1879, and of our own Independence the 103rd year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

47 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To William R. Fosdick, James D. Fish, Frederick W. Huidekoper, Thomas W. Shannon, and John M. Denison, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, A. D. 1879, pursuant to an appeal allowed in the circuit court of the United States for the northern district of Illinois, wherein The Chicago, Danville and Vincennes Railroad Company, James W. Elwell, and R. Biddle Roberts are appellants, and William R. Fosdick, James D. Fish, Frederick W. Huidekoper, Thomas W. Shannon, and John M. Dennison are appellees, to show cause, if any there be, why the decretal order entered in said cause, on the 12th day of April, A. D. 1877, confirming the master's report of the sale of the property and premises described in the decree entered therein, on the 5th day of December, A. D. 1876, and also the certain other decretal order entered in said cause, on the 16th day of April, A. D. 1877, ordering and decreeing the master's deed and the property therein described to be delivered to said F. W. Huidekoper, Thomas W. Shannon, and John M. Denison should not be reversed, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Thomas Drummond, judge of the seventh judicial circuit, this 26th day of March, in the year of our Lord one thousand eight hundred and seventy-nine.

THOMAS DRUMMOND.

48 STATE OF ILLINOIS,
County of Cook, ss:

John Moroney, being duly sworn, on his oath says that he served the within citation upon Messrs. Lawrence, Campbell & Lawrence, solicitors for said William R. Fosdick & James D. Fish, complainants, and upon Henry Crawford, esq., solicitor for said Frederick W. Huidekoper, Thomas W. Shannon, and John M. Dennison, intervening petitioners, by leaving a true copy thereof with George C. Campbell, esq., of said firm of Lawrence, Campbell & Lawrence, and with said Henry Crawford, esq., at their respective offices in the city of Chicago, in said county, upon Monday, March 31st, A. D. 1879.

JOHN MORONEY.

Subscribed and sworn to before me this 3rd day of April, A. D. 1879.

LESLIE CARTER,
Notary Public.

(Indorsed:) Supreme Court of the United States. Chicago, Danville & Vincennes R. R. Co. et al. vs. William R. Fosdick et al. Citation to October term, A. D. 1879.

(Indorsement on cover:) No. 21. The Chicago, Danville and Vincennes Railway Company, James W. Elwell, and R. Biddle Roberts, appellants, vs. William R. Fosdick, James D. Fish, Frederick W. Huidekoper, Thomas W. Shannon, and John M. Denison. N. Illinois, C. C. U. S. Filed 9th April, 1879.

47

Supplemental Transcript of Record.

UNITED STATES SUPREME COURT,

No. 21.

OCTOBER TERM, A. D. 1882.

CHICAGO, DANVILLE & VINCENNES RAILROAD COMPANY, JAMES W. ELWELL AND R. BIDDLE ROBERTS, *Appellants*,

vs.

WM. R. FOSDICK, JAMES D. FISH, FREDERICK W. HUIDEKOPER, THOMAS W. SHANNON, AND JOHN M. DENNISON, *Appellees*.

Appeal from the
Circuit Court of the
United States, Northern
District of Illinois.

PRESS OF BEACH, BARNARD & CO., 104 RANDOLPH STREET, CHICAGO.

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UNITED STATES SUPREME COURT,

No. 21.

OCTOBER TERM, A. D. 1882.

CHICAGO, DANVILLE & VINCENNES RAILROAD COMPANY, JAMES W. ELWELL AND R. BIDDLE ROBERTS, *Appellants,* *vs.* WM. R. FOSDICK, JAMES D. FISH, FREDERICK W. HUIDEKOPER, THOMAS W. SHANNON, AND JOHN M. DENNISON, *Appellees.*	Appeal from the Circuit Court of the United States, Northern District of Illinois.

SUPPLEMENTAL TRANSCRIPT OF RECORD.

UNITED STATES CIRCUIT COURT, }
NORTHERN DISTRICT OF ILLINOIS. } SS.

Fosdick & Fish
agst.
The Chicago, Danville and Vincennes R. R. Co. *et al.*

TO MESSRS. LAWRENCE, CAMPBELL & LAWRENCE,
Solicitors for Trustees:

Please take notice that we shall, at 10 o'clock A. M., on Saturday, the 17th day of Feb'y, 1877, on behalf of F. W. Huidekoper, Thomas W. Shannon and John M. Dennison, apply to his Honor, Judge Drummond, in chambers, for an order confirming to them the sale of the railroad track, franchises, etc., of the Chicago, Danville and Vincennes R. R. Co., and also for an order allowing an immediate discharge of the bid, and directing the master to make a conveyance to them of said property.

(Signed) CRAWFORD & McCONNELL.

Service accepted Feby. 16, 1877.

LAWRENCE, CAMPBELL & LAWRENCE,
Solicitors for Trustees.

Endorsed:

United States Circuit Court, Northern District of Illinois—Fosdick *et al.* *v.* C., D. & V. R. R. *et al.*
Filed February 17, 1877.

(Signed) WM. H. BRADLEY, *Clerk.*

UNITED STATES CIRCUIT COURT, }
NORTHERN DISTRICT OF ILLINOIS. } ss.

Fosdick & Fish
vs.
The Chicago, Danville & Vincennes R. R. Co., *et al.*
} *Foreclosure.*

To E. WALKER, *Esq., Solicitor for R. R. Co:*

Please take notice that we shall at 10 o'clock A. M., on Saturday, the 17th day of February, 1877, on behalf of F. W. Huidekoper, Thomas W. Shannon and John M. Dennison, apply to his Honor Judge DRUMMOND, in chambers, for an order confirming to them the sale of the railroad track, franchises, &c., of the Chicago, Danville & Vincennes R. R. Co., and also for an order allowing an immediate discharge of the bid and directing the master to make a conveyance to them of such property.

Respectfully,

(Signed) CRAWFORD & McCONNELL.

Service acknowledged Feb'y 16, 1877.

(Signed) E. WALKER.

Endorsed:

Fosdick *et al.* *v.* C., D. and V. R. R. Co.

Filed February 17, 1877.

(Signed) WM. H. BRADLEY, *Clk.*

UNITED STATES CIRCUIT COURT — NORTHERN DISTRICT OF ILLINOIS.

SATURDAY, February 17, A. D. 1877.

Present, the Hon. THOMAS DRUMMOND, Circuit Judge.

William R. Fosdick *et al.* *vs.* The Chicago, Danville & Vincennes Railroad Company *et al.*	*In Chancery.*

Now comes Henry W. Bishop, Esq., the master in chancery of this court, and files his report of sale of said railroad and property ordered to be sold by him herein, and on motion of complainants' solicitors it is ordered by the court that said report and sale be confirmed, unless objections be filed thereto on or before Friday morning next.

And now comes Messrs. Huidekoper, Shannon and Dennison, purchasers of said road at said sale, and file their petition asking for a confirmation of said report, purchase and sale, and for other relief, and thereupon it is ordered that the same be set for hearing on Friday next.

And now comes John N. Jewett, Esq., who files his intervening petition herein, and thereupon it is ordered that the same be referred to Henry W. Bishop, Esq., the master in chancery of this court, to examine the same, and report herein to the court.

And now comes James W. Brisbane, who files his intervening petition herein, and thereupon it is ordered that the same be referred to said Henry W. Bishop, Esq., master, to examine the same, and report thereon to the court.

Endorsed:

Order of February 17, 1877, confirming sale, unless objections be filed by February 23, 1877.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } SS.

IN THE CIRCUIT COURT THEREOF.

William R. Fosdick, James D. Fish, *vs.* The Chicago, Danville and Vincennes Railroad Company, James Elwell and R. Biddle Roberts.	*In Chancery.*

To the Honorable Thomas Drummond, Judge of said court, in Chancery sitting:

Your petitioner, Arthur O. Slaughter, of the city of Chicago, in the State of Illinios, respectfully represents to your Honor:

That he is, and for a long time past has been, the legal owner of eighty bonds of the defendant, the Chicago, Danville and Vincennes Railroad Company, of $1,000 each, with interest coupons attached, dated the 10th day of March, A. D. 1869, the same being part and parcel of the 2,500 first mortgage bonds described in the decree rendered in this cause on the 5th day of December, A. D. 1876.

That as such owner, your petitioner is interested in the fund realized or to be realized from a sale of the property and franchises of said defendant company, and entitled to a distributive share thereof.

Therefore your petitioner prays for leave to interplead in this cause, and as a party litigant therein, to be permitted to except to the report of sale made by H. W. Bishop, master in chancery of this court, and filed herein February 17, 1877, and to object to the confirmation thereof.

And by leave your petitioner hereby excepts to the said report, and objects to the confirmation of said sale for the following reasons, to wit:

1. He excepts to said report because said sale was not made in conformity to the decree of December 5, 1876, nor in conformity to the terms of sale as set forth in the published notice thereof, in this: that by the terms of said decree and by the said published notice, one-quarter of the purchase price was to be paid in cash at the time of sale, and one-half the balance to be paid in cash in three months, and the remainder to be paid in cash within six months from the day of sale. Whereas, after the opening of said sale and the reading by said master of the said published notice thereof, and before any bids were made, said master changed the terms of said sale by requiring bids to be paid in gold instead of cash, and your petitioner shows that for many years last past gold has formed no part of the circulating medium of the city of Chicago, but, on the contrary, has been an article of merchandise therein, varying in price from five to twenty-five per cent. premium over the legal tender currency of the country. Upon information and belief, petitioner says that on the day of said sale there was not in the market and for sale in said city of Chicago gold sufficient in amount to pay the one-fourth part of the purchase price of said railroad, its property and franchises, and that, in fact, on said day of sale there was not to exceed $50,000 of gold in the market and for sale in said city. That the amount of gold required to pay the said one-fourth part of said purchase price could only be obtained by purchasing the same in the city of New York and transporting it to Chicago, a process taking from two to four days of time.

So your petitioner shows that said change of terms, made as aforesaid, after the opening of said sale, precluded the possibility of free competition in bidding thereat.

2. Petitioner further excepts to said report of sale, because no mention was made, either in said decree or the notice of sale thereunder, that said road and franchises were to be sold subject to any taxes whatever, or that any tax lien whatsoever exists thereon. Yet, notwithstanding, after the opening of said sale, and before any bids were made, the said master announced that said sale would be made subject to all unpaid taxes upon the said property and franchises; that the amount of said unpaid taxes was not stated or shown, nor could the same have been ascertained except by application to the proper officers of the various counties through which said road runs.

Petitioner shows, that selling said property subject to an unknown amount of unpaid taxes, and requiring gold in payment of the purchase price, neither of which conditions of sale were made known to bidders until the announcement thereof by the master, at the time of sale, operated as a surprise to the bidders, and a consequent sacrifice of the property.

Petitioner objects to the confirmation of said sale, because competition in bidding thereat was prevented, in this: Petitioner states, on information and belief, that one Joseph Armour, at the time of said sale, was the owner of a large number, to wit, over 200, of the bonds of said defendant company, and at said sale was a *bona fide* bidder for said road and franchises, bidding as high as $1,400,000 therefor; that, thereupon, the subsequent purchasers of said road, or their agent, purchased from said Armour all his said bonds, for the purpose of preventing said Armour from further bidding at said sale, and that said Armour, by reason thereof, did not thereafter bid for said property exceeding the sum aforesaid.

And petitioner shows, upon information and belief, that said purchasers or their said agents, paid or agreed to pay said Armour, for his said bonds, a much larger amount than the distributive share of said bonds under the sale as made by said master.

And petitioner, upon information and belief, charges that but for said purchase of said bonds from said Armour as aforesaid, he, said Armour, would have bid for said property, at said sale, a much larger sum than he bid thereat.

4. Petitioner further objects to the confirmation of said sale, because, he says, upon information and belief that the purchasers of said road and franchises did not at the time of said sale pay to the said master in gold the one-quarter of their said bid, and upon information and belief petitioner charges that upon the making of said sale, the said purchasers of said property arranged a bank credit in favor of said master for the amount of the one-quarter of their said bid, but that no gold was paid to or received by the said master on account thereof, and upon like information and belief, petitioner charges that the bank with which the aforesaid credit was arranged, had not, at the time of said sale, nor for many days thereafter, in its possession gold sufficient in amount to pay the said one-quarter of said bid at said sale.

5. Petitioner further objects to the confirmation of said sale because he believes the price obtained for the property and franchises sold was wholly inadequate. And petitioner

shows that said property and franchises are reasonably worth the sum of $2,000,000; that, operated as a railway, will pay a large interest upon that sum; that the earnings of said road under the management of the receiver appointed by this honorable court for the first eleven months of the year 1876, were $805,639.32; expenses for same time, $520,070.66; showing earnings over expenses for eleven months $285,568.66.

And in this connection your petitioner refers to the reports of the receiver of said road, on file in this court, showing the earnings of said road.

Petitioner, upon information and belief, charges that if said sale had been made with the privilege to bidders of paying their bids in the bonds of said company, as now prayed for by the purchasers at said sale, that said road would have brought a much larger price, and that if said road had not been sold subject to taxes, as aforesaid, and the bidders had not been required to pay in gold, as aforesaid, the same would have sold for a much larger price.

Petititioner further shows to your Honor that he is informed that voluntary affidavits in support of the charges in this petition concerning the purchase of bonds from said Armour by the purchasers of said road, nor concerning the payment of gold by said purchasers, or the possession of gold by said bank, cannot be had. Petitioner therefore prays that if said facts should become material, your Honor would cause witnesses to be named by your petitioner to be summoned and examined before a master to be appointed for that purpose.

All of which is respectfully submitted.

And your petitioner prays that said sale may be set aside and a re-sale ordered by this honorable court, and, as in duty bound, your petitioner will ever pray, etc.

ARTHUR O. SLAUGHTER.

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

Arthur O. Slaughter, being duly sworn, says that he is the petitioner named in, and who subscribed the foregoing petition; that he has read said petition and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters he believes it to be true.

Subscribed and sworn to this 23d day of February, A. D. 1879, by Arthur O. Slaughter.

[SEAL.] FRANK H. STARKWEATHER,
Notary Public.

CIRCUIT COURT OF THE UNITED SDATES, }
NORTHERN DISTRICT OF ILLINOIS. } SS.

William R. Fosdick and James D. Fish
against
The Chicago, Danville and Vincennes
Railroad Company.

UNITED STATES OF AMERICA, }
NORTHERN DISTRICT OF ILLINOIS. } SS.

S. P. McConnell, upon his oath, says that he was in attendance on the seventh day of February, 1877, at the master's sale of the Illinois division of the Chicago, Danville and Vincennes Railroad Company in front of the Republic Life Insurance building in the city of Chicago; that he was present at the beginning of such sale, and heard the announcement of the master in which he read the notice of sale and the terms of the decree, and the announcement that the bid would be payable in gold, and the sale made subject to all taxes upon the property; that at said sale and at said announcement Luther H. Pierce and James Bolton were both present and heard such announcement, being but a short distance from the master, and neither of said parties nor any other person to the hearing of this deponent made any objection or remonstrance against the announcement of the master as to such terms of sale in any respect whatever.

This affiant was present at the entire sale, during all the bidding until the master struck off the property on the bid of Huidekoper, Shannon and Dennison; that the bidding was started at $500,000, and said Bolton made several bids upon said property, from time to time, and his last bid was $1,300,000, as affiant recollects; that the sale was very largely attended, a great crowd having gathered, and the master cried the last bid before he struck off the property for a very considerable period of time, probably fifteen minutes, in his efforts to procure an enhanced bid.

SAMUEL P. MCCONNELL.

Subscribed and sworn to before me,
this 22d day of February, A. D. 1877.
[SEAL.] GEO. MILLS ROGERS,
Notary Public.

Endorsed as follows:

U. S. Circuit Court, Northern District of Illinois—William R. Fosdick, and James D. Fish *against* The Chicago, Danville and Vincennes Railroad Company. Affidavit of Samuel P. McConnell.

Filed February 23, 1877.

WM. H. BRADLEY, *Clerk.*

CIRCUIT COURT OF THE U. S.—NORTHERN DISTRICT OF ILLINOIS.

William R. Fosdick and James D. Fish
against
The Chicago, Danville and Vincennes Railroad Co., &c. } *Chancery.*

U. STATES OF AMERICA,
NORTHERN DISTRICT OF ILL. }

Frederick W. Huidekoper, on oath, says that he is one of the purchasers of the property mentioned in the master's report. Affiant attended the sale, and made the bid which was accepted. The sale was very largely attended, the bidding was spirited, and the master gave every one present the amplest time to make their bids, and cried the final bid for probably twenty minutes before he struck the property off.

That himself and associates in the purchase had not, prior to said sale, made any preparation to procure gold coin, but that no difficulty was experienced by them in arranging for the necessary gold to be deposited in the First National Bank of Chicago, and the full amount was so deposited about one (1) o'clock, on the day of sale, to the credit of the master, and has been ever since subject to his sight-check.

The difference between gold and currency on that day was about 6¼ per cent., and it was wholly immaterial in what the bid was payable, if the bidding was made with reference to the character of payment.

Affiant has read the affidavit of L. H. Pierce, and the statements therein contained as to the purchase of bonds from Jos. F. Armour are wholly untrue.

Neither this affiant nor his associates, or either of them, either personally or through any agent, purchased said bonds; the purchase was an individual transaction of Mr. Mangum. It was negotiated and concluded before the sale or any bidding whatever; and the statement that it was done for the purpose of preventing bidding, or that there was any understanding between the purchasers, or either of them, and said Armour, or anybody else, that any parties should not bid at said sale, is utterly untrue.

(Signed) F. W. HUIDEKOPER.

Sworn and subscribed before me,
this 23d Feby., 1877.

(Signed) H. W. BISHOP, *U. S. Com.*

Endorsed as follows:

U. S. Circuit Court, N. Dist. of Ills.
Fosdick et al. v. C., D. & V. R. R. Co.
Affidavit of Frederick W. Huidekoper.
Filed February 23, 1877.

W. H. BRADLEY, *Cl'k.*

CIRCUIT COURT OF THE UNITED STATES—NORTHERN DISTRICT OF ILLINOIS.

William R. Fosdick, &c.,
vs.
The Chicago, Danville & Vincennes Railroad. } *Chancery.*

STATE OF ILLINOIS,
COOK COUNTY. } SS.

Joseph F. Armour, on oath, says that he is the person referred to in the affidavit of L. H. Pierce, on file in this cause; that it is wholly untrue that said Huidekoper, Shannon and Dennison, or either of them, purchased affiant's bonds at any time; that it is equally untrue that affiant sold his bonds during the sale at any time, or that the sale was for the purpose of preventing bidding, or that it was contingent on any purchase of the road by the present purchasers, or any other thing whatever. On the contrary, the sale was a purely private sale between himself and Mr. Mangum; it was absolute and unconditional; the negotiations had been pending, looking to a sale by affiant for some time prior to the 7th of February, and they were agreed on and concluded prior to the sale; and this affiant made no agreement, and had no understanding with said Mangum or the purchasers as to his bidding or not bidding at said sale, such a subject never being even suggested by any person whatever to this affiant, nor was this affiant in any manner prevented by any understanding or agreement, written or oral, direct or indirect, from bidding on said property if he had desired to do so.

Affiant was present at said sale, which was largely attended, and no objections were heard by this affiant to the terms of sale.

On that day the difference between gold and currency was about six per cent., and it would have been wholly immaterial to this affiant, if he had become the purchaser, whether the bid was payable in gold or greenbacks, provided the announcement had been made in advance, so as to enable him to determine the amount of his bid with reference to the method of payment.

J. F. ARMOUR.

Subscribed and sworn to before me,
this 23d day of February, A. D. 1877.

{CHARLES L. DRIESSLEIN,
Notarial Seal.
Cook County, Ill.}

CHARLES L. DRIESSLEIN.
Notary Public.

Endorsed:

U. S. Circuit Court, Northern District of Illinois—William R. Fosdick *et al. vs.* The Chicago, Danville and Vincennes Railroad Company. Affidavit of J. F. Armour.

Filed February 23, 1877. WM. H. BRADLEY, *Clerk.*

Monday, February 26, A. D. 1877.

UNITED STATES CIRCUIT COURT—NORTHERN DISTRICT OF ILLINOIS.

Present, Hon. Thomas Drummond, Circuit Judge.

Wm. R. Fosdick & James D. Fish
vs.
The Chicago, Danville & Vincennes Railroad Co. *et al.*
} *In Chancery.*

Now, on this day come again the parties by their several solicitors, and also comes Arthur O. Slaughter, by his solicitors, and the court being sufficiently advised, overrules the exceptions filed by said Slaughter to the master's report of sale, and does in all things confirm the sale to said Frederick W. Huidekoper, Thomas W. Shannon and John M. Dennison.

And thereupon the said Slaughter prays an appeal to the Supreme Court of the United States from said order of confirmation, which is allowed upon a bond, with sufficient security, for one thousand dollars, being filed within sixty days, to answer for costs, but said bond not to operate as any supersedeas.

UNITED STATES CIRCUIT COURT—NORTHERN DISTRICT OF ILLINOIS.

February 26, A. D. 1877.

Before Hon. THOMAS DRUMMOND, Judge.

William R. Fosdick and James D. Fish
vs.
The Chicago, Danville & Vincennes Railroad Co. and others.
} *In Chancery.*

On motion, the petition of *Frederick W. Huidekoper*, *Thomas W. Shannon* and *John M. Dennison*, the purchasers, filed February 17, 1877, asking for the immediate discharge and payment of their bill, as herein set forth, together with the answers thereto, are referred to *Henry W. Bishop*, master, to take evidence and report thereon.

IN THE CIRCUIT COURT OF THE UNITED STATES—FOR THE NORTHERN DISTRICT OF ILLINOIS.

William R. Fosdick *et al.*
vs.
The Chicago, Danville & Vincennes Railroad Company *et al.*
} *In Chancery.*

MASTER'S REPORT.

To the Honorable Thomas Drummond, Judge of said Court:

I, Henry W. Bishop, master in chancery of the said court, hereby report that in pursuance of a decree of the said court, entered in the said cause on the 5th day of December, A. D. 1876, and of another order of said court entered in said cause on the 12th day of April, A. D. 1877, I have executed to Frederick W. Huidekoper, Thomas W. Shannon and John M. Dennison, purchasers, under the sale heretofore made by me under a decree of this court, of the property therein mentioned and described, which deed is marked upon each leaf thereof by me for the purpose of identification, and which I now and herewith present to the court for its approval and confirmation.

I further report that in compliance with the order of said court dated the 12th day of April, A. D. 1877, the said purchasers have surrendered to me Twenty-three hundred and twenty-eight of the Twenty-five hundred first mortgage bonds of the Illinois division of the Chicago, Danville & Vincennes Railroad Company, together with the coupons and certificates of indebtedness thereto attached, as specified in my former report.

All of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

Dated CHICAGO, April 16, A. D. 1877.

UNITED STATES CIRCUIT COURT—NORTHERN DISTRICT OF ILLINOIS.

MONDAY, April 16, 1877.

Present — The Hon. Thomas Drummond, Circuit Judge.

426 William R. Fosdick and
James D. Fish
12,388 *vs.* } *In Chancery.*
The Chicago, Danville & Vincennes
Railroad Company *et al.*

The report of Henry W. Bishop, Esq., master in chancery, having been filed, reporting the surrender to him of two thousand three hundred and twenty-eight (2,328) bonds, and the coupons and certificates in said report mentioned, and the drawing and execution by him of a deed to Frederick W. Huidekoper, Thomas W. Shannon, and John M. Dennison.

In pursuance of a decree entered in this cause on December 5, 1876, and the further order or decree of this court entered herein on the 12th day of April, 1877, and the said report having been examined, and also said deed presented therewith, the said report and deed are herewith confirmed and approved, together with the reception by said master, of the bonds, coupons and certificates in said report mentioned, also approved and confirmed. And the said deed is ordered to be entered of record, and is as follows, to wit:

"This indenture, made the 12th day of April, and in the year of our Lord 1877, between Henry W. Bishop, as master in chancery of the Circuit Court of the United States for the Northern District of Illinois, party of the first part, and Frederick W. Huidekoper, Thomas W. Shannon and John M. Dennison, parties of the second part, witnesseth:

"That whereas, by a decree duly entered of record on the 5th day of December, 1876, it was ordered, adjudged and decreed by the Circuit Court of the United States, for the Northern District of Illinois, in a certain action there pending, wherein William R. Fosdick and James D. Fish were complainants, and the Chicago, Danville, and Vincennes Railroad Company and others were defendants, that the Chicago, Danville and Vincennes Railroad Company should, within twenty days thereafter, pay or cause to be paid to William R. Fosdick and James D. Fish, as trustees for first mortgage bondholders, the certain sums of money which by said decree were adjudged to be due to such trustees under a certain mortgage or deed of trust made, executed and delivered by said company on the 10th day of March, 1869, and on the bonds issued thereunder, and it was further decreed that all of the said railroad property, premises and franchises, described in said mortgage or deed of trust, together with all the rights, franchises, property, and appurtenances thereof, and the rolling stock thereto belonging, and hereinafter particularly scheduled and set forth, and all the right, title, interest and equity of redemption of said Chicago, Danville and

Vincennes Railroad Company should be sold as an entirety by Henry W. Bishop, the master in chancery of said Circuit Court of the United States at public auction to the highest and best bidder therefor, on the terms specified in said decree, at the west door of the Republic Life Insurance Company building, in the city of Chicago, and State of Illinois, after having first given notice of the time and place and terms of sale, and the description of the property to be sold, by advertisement thereof, in some public newspaper published in the city of Chicago, for the space of thirty days prior to such day of sale.

"*And whereas*, the said Chicago, Danville & Vincennes Railroad Company failed to pay the said sum of money adjudged by said decree as aforesaid to be due, within the time ordered, and thereupon the said master in chancery, after having given due notice of the time, place and terms of sale, and a description of the property to be sold, in accordance with the direction of the said decree, did, on the 7th day of February, 1877, offer for sale at public auction the said property, in pursuance of said notice; and thereupon Frederick W. Huidekoper, Thomas W. Shannon and John M. Dennison became the highest bidders therefor at the sum of $1,450,000 in gold, and were thereupon declared the purchasers thereof by said master, and the sale and bid having been reported by said master in chancery to the said court, and the said sale having been in all things confirmed by the said court, and the purchasers having fully complied with the terms of such decree, and the further decree of said court, dated April 12, 1877, as to payments, and the said master having been ordered by the said further decree of said court to execute and deliver to such purchasers a conveyance of such property so sold, and purchased by them as aforesaid.

"Now, therefore, this indenture witnesseth that the said Henry W. Bishop, master in chancery of the Circuit Court of the United States for the northern district of Illinois, party of the first part, in order to carry into effect the said sale so made as aforesaid, and in execution of the orders and decrees of said court requiring him to execute and deliver such conveyance, and in consideration of the premises and of the payments made by the said parties of the second part in accordance with the orders of the court, has sold, and by these presents does sell and convey unto the said Frederick W. Huidekoper, Thomas W. Shannon and John M. Dennison, parties of the second part, all and singular the main line of the Chicago, Danville & Vincennes railroad, from Dalton, in the county of Cook, southerly to Danville, in the county of Vermillion, a distance of one hundred and eight (108) miles, and a branch line from Bismarck, in said Vermillion county, southeasterly to the east line of the State of Illinois, a distance of four and six-tenths ($4\frac{6}{10}$) miles, together with the right of way, station and other grounds, grading, bridges, culverts, tracks, shops, including fixtures and tools, stations and other buildings and structures, fences and appurtenances thereof, and all wood, coal and other supplies for the use and operation thereof. The contract rights of the said Chicago, Danville & Vincennes Railroad Company, and the use of the tracks and appurtenances of the Chicago & Southern Railroad Company and the tracks and appurtenances of the Pittsburgh, Cincinnati & St. Louis Railway Company from Thornton, in Cook county, to and into the city of Chicago. The terminal tracks, sidings, switches, and appurtences of said Chicago, Danville & Vincennes Railroad Company at and near said city of Chicago, whether the same are situated on the grounds and rights of way of said company, or otherwise, aggregating a length of seven and eight-tenths ($7\frac{8}{10}$) miles, together with all rights of way or contracts therefor, or rights to have and maintain such tracks, or any part thereof, and all buildings, structures, erections, and appurtenances thereof, including a water tank and an undivided interest in an engine house of fourteen (14) stalls, situate on grounds of the said Chicago & Southern Railroad Company, adjacent to the city of Chicago, and all wood, coal and other supplies, tools and fixtures for the use of said Chicago, Danville & Vincennes Railroad Company, and situate or used within said city of Chicago, or along the line of said Chicago and Southern Railroad Company or said Pittsburg, Cincinnati & St. Louis Railway Company, north of said Thornton. The south eighteen (18) feet of lot twelve (12), and lots thirteen (13), sixteen (16), in block thirteen (13), and lot six (6) in block nine (9), Carpenter's addition to Chicago; also lot twenty-four (24) in block seven (7), Carpenter's addition to Chicago, subject to a lien of about twenty-five hundred dollars ($2,500); lots twenty-nine (29), thirty (30), and thirty-two (32), and the leasehold interest in lot thirty-one (31), all in block four (4), Magie & High's addition to Chicago, with the tracks and buildings and fixtures thereon, said lots twenty-nine (29), thirty (30), and thirty-two (32) being subject to a first lien of two thousand three hundred dollars ($2,300). Twenty-five (25) locomotives, numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19, 20, 21, 22, 24, 30, 31, 32, 33 and 34. Six (6) passenger cars, numbered 3, 4, 5, 6, 7 and 8. Three (3) baggage cars, numbered 2, 3 and 4.

Three (3) mail cars, numbered 1, 3 and 4. Eight (8) caboose cars, numbered 3, 4, 5, 6, 7, 8, 9 and 10. One hundred and sixty-one (161) box cars, being those bearing numbers between 564 to 615, both inclusive, and 1,000 to 1,015, both inclusive. Eighty-five (85) box cars (Adams) being those bearing numbers between 1,136 to 1,220, both inclusive. Three hundred and eighteen (318) coal cars, being those bearing numbers between 1 to 100, both inclusive, and 145 to 376, both inclusive. One hundred and eighteen (118) block coal cars, being those bearing numbers between 01 to 0,118, both inclusive. Thirty-four (34) stock cars, being those bearing numbers between 501 to 534, both inclusive. All of the franchises of the said Chicago, Danville & Vincennes Railroad Company within the State of Illinois, and all of the property and premises within said state other than that in this schedule specifically described, in which the said railroad company has any interest held by it for use in the maintenance and operation of the said line of railroad. To have and to hold said property, with the appurtenances, rights and franchises, and each and every part thereof so sold and hereinbefore described, unto the said Frederick W. Huidekoper, Thomas W. Shannon and John M. Dennison, their heirs and assigns. Meaning and intending hereby to convey to the said parties of the second part the above described premises and franchises as fully and completely as the said party of the first part, the said master in chancery, by virtue of the said several decrees and orders of said Circuit court, reference being hereby had thereto, can or could sell and convey the said premises, property and franchises subject to all taxes.

"In witness whereof the said Henry W. Bishop, as master in chancery aforesaid, has hereunto set his hand and seal, the day and year first above written.

[SEAL.] HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois."

"STATE OF ILLINOIS }
COOK COUNTY. } SS.

"I, Edmund Gorvett, a notary public in and for said "county, in the State aforesaid, do hereby certify that "Henry W. Bishop, who is personally known to me to be "the same person whose name is subscribed to the annexed deed of conveyance, appeared before me this day "in person, and acknowledged that he, as master in "chancery of the Circuit Court of the United States for "the Northern District of Illinois, had signed, sealed and "delivered the said instrument of writing as his free act "and deed for the uses and purposes therein expressed.

"Given under my hand and notarial seal this 12th day "of April, A. D. 1877.

[Notarial Seal.] EDMUND GORVETT,
Notary Public."

Entered of record, April 16th, A. D. 1877.

UNITED STATES CIRCUIT COURT—NORTHERN DISTRICT OF ILLINOIS.

Wm. R. Fosdick *et al.* *vs.* The Chicago, Danville & Vincennes Railroad Compant *et al.*	*In Chancery.*

It appearing to the court that the amount of the original decree in this cause is subject to a credit of one million one hundred and fifty-three thousand eight hundred and thirty-six dollars and twenty-eight cents ($1,153,-836.28), and that the said petitioners, Frederick W. Huidekoper, Thomas W. Shannon, and John M. Dennison, as trustees, are entitled to a judgment over for the deficiency of the decree, not satisfied by the distributive share of the proceeds of sale of the mortgaged property. It is ordered by the court that the said Frederick W. Huidekoper, Thomas W. Shannon and John M. Dennison, trustees, do have and recover, of and from the Chicago, Danville & Vincennes Railroad Company the sum of one million eight hundred and twenty-three thousand five hundred and seventy-three dollars and eighty-four cents ($1,823,573.84); payable in American gold coin, and that they have execution accordingly.

[Entered] November 19, A. D. 1877.

NORTHERN DISTRICT OF ILLINOIS, SS.

I, WILLIAM H. BRADLEY, clerk of the Circuit Court of the United States, within and for the Northern District of Illinois, do hereby certify the accompanying and foregoing volume of twenty-four printed pages, to contain true, full and perfect copies of files and orders and entries of record of said court, as the same are respectively enumerated and described in the printed index, on the page of this volume preceding the said printed copies herein and marked "B."

That said copies or record, embracing said twenty-four pages, are true and correct copies of their several and respective original files and orders of record, all in said court, and now in my custody, and each and all of the same pertain to and were filed and made in the cases lately therein pending, wherein William R. Fosdick and James D. Fish were and are the complainants, and the Chicago, Danville and Vincennes Railroad Company *et al.* were and are defendants.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said northern district, this seventh day of October, A. D. 1882.

(Signed) WM. H. BRADLEY, *Clerk.*

[SEAL.]

UNITED STATES SUPREME COURT, OCTOBER TERM, A. D. 1882.

Chicago, Danville and Vincennes Railroad Company *et al.*, *Appellants*, No. 21. *vs.* William R. Fosdick *et al.*, *Appellees.*	*Appeal from the United States Circuit Court, Northern Dis- of Illinois.*

It is hereby stipulated and agreed that the foregoing transcript of certain orders, pleas and proceedings in the United States Circuit Court, in and for the Northern District of Illinois, may be filed as a return to a writ of *certiorari*, in said cause above named, and be deemed and taken in all respects as a part of the record therein.

It is further hereby stipulated and agreed, that the record of a cause between the same parties heretofore pending in this court, being number eighty-two (82) on the docket of the October term, A. D. 1881, may be considered and treated as a part of the record in this cause.

(Signed) E. WALKER.
LAWRENCE, CAMPBELL & LAWRENCE.
MELVILLE W. FULLER.

No. 21

SUPREME COURT U.S.
FILED
OCT 19 1882
JAMES H. McKENNEY, Clerk

16-47

SUPREME COURT of the UNITED STATES,

October Term, A. D. 1882.

THE CHICAGO, DANVILLE AND VINCENNES RAILROAD COMPANY et al., *Appellants,*
vs.
WILLIAM R. FOSDICK and JAMES D. FISH, FREDERICK W. HUIDEKOPER et al., *Appellees.*

Appeal from the United States Circuit Court for the Northern District of Illinois.

Reply to Argument of Appellees' Solicitors.

E. WALKER,
Solicitor for Appellants.

PRESS OF BEACH, BARNARD & CO., 104 RANDOLPH STREET, CHICAGO

SUPREME COURT of the UNITED STATES,

OCTOBER TERM, A. D. 1882.

THE CHICAGO, DANVILLE AND VINCENNES RAILROAD COMPANY ET AL., *Appellants*, *vs.* WILLIAM R. FOSDICK AND JAMES D. FISH, FREDERICK W. HUIDEKOPER ET AL., *Appellees.*	Appeal from the United States Circuit Court for the Northern District of Illinois.

Reply to Argument of Appellees' Solicitors.

Appellee's counsel state: "that appellant's position as to "the purchasers is, that they were parties to the record "and the original decree, whom the law presumes to "have knowledge of and holds responsible for defects and "errors." We claim this and more. We claim that these purchasers were bondholders controlling nearly all the first mortgage bonds. That it was their mortgage that was foreclosed, their bonds that were being collected; that the plaintiffs were mere trustees, and that the bondholders were the sole creditors of the company, and the real parties plaintiffs in interest, and the only parties benefited by the proceedings.

It will be remembered that the initiative proceedings for the foreclosure of this mortgage were in the state court, and commenced by these bondholders, making the trustees parties defendant.

Afterward, a bill was filed in the Circuit court by the trustees, in the interest of all the bondholders for the foreclosure of the mortgage and the collection of the principal and interest of their bonds.

Had the first bill filed, proceeded to a final decree, and at the sale had the property been purchased by the plaintiffs for the benefit of themselves and other holders of the first mortgage bonds, it would be admitted that the title of these purchasers would fall upon the reversal of the decree of foreclosure and sale.

The plaintiffs, however, did not proceed with their cause to final decree in the state court, but upon the subsequent filing of the bill by the trustees, these same plaintiffs became parties to the record as intervenors.

The bill filed by the trustees was in the sole and exclusive interest of the bondholders. They had declared the principal of all the bond due and payable, by reason of the default in the payment of the interest thereon.

They assumed to act at the special instance and request of the bondholders.

In the attempted execution of their trust, they filed the bill for the foreclosure of the mortgage and the collection of the bonds.

The decree was entered in the sole interest of these bondholders. The sale was made under the decree, the property purchased by the bondholders, and the deed made to them upon the surrender of their bonds to the court.

We insist, therefore, that even if the bondholders had not intervened in the cause, that they would acquire no title to the property purchased by them at the sale under the decree.

Appellee's counsel also insist that, "the recent reversal "of the main decree in this cause cannot have a retroactive "effect, so as to enable appellant to suggest error in the "decretal order" entered on the 12th and 16th of April, in execution of the main decree of foreclosure and sale. In support of this proposition, he cites *Bank of Washington* v. *Bank of U. S.*, 6 Peters., 16.

In this case the defendants in the execution paid to the agents of the plaintiffs the amount of the debt, and gave a verbal notice that it was their intention to sue out a writ of error to reverse the judgment. This was afterwards done, and the judgment was reversed. The agents of the plaintiffs, however, had paid over to him the amount received, and the defendants instituted a suit against the agents to recover the sum paid to them.

The court held that they could not recover. The court further held, on page 17, that "upon the reversal of the "judgment the law raises an obligation in the party to the "record, who has received the benefit of the erroneous "judgment, to make restitution to the other party of "what he has lost."

In the case at bar the bondholders had received under their judgment, which has been reversed, the property of the railroad company, and so far as this record discloses, still hold the possession of the same.

Under this authority the appellants have the clear and undoubted right to demand of the appellees the restitution of the property.

Appellee's counsel also cites as an authority, *Corwith* v. *Bank of Illinois*, 15 Wis., 291.

In this case the court holds, page 290, that the title to lands bid in by parties to the record, on a sale made in pursuance of an erroneous judgment, falls with the reversal of the judgment or decree. Also, that the title of strangers purchasing under such execution or sale, remains undisturbed.

The court also holds that, “there are exceptions to the “rule that where a judgment is reversed for error, the “sale under the execution shall not be avoided.”

" The exception necessarily implied is, if the *plaintiff* " *or creditor* be the purchaser, the same may be avoided. " He has parted with no money, and has no property to " lose."

The purchasers of the property under this decree were not only intervenors and parties to the record, but were also creditors. The equitable title of the mortgaged premises was also in these bondholders.

They held and controlled $2,380,000 of $2,500,000 of the first mortgage bonds.

Upward of $1,100,000 of these bonds were surrendered to the court in payment of their bid.

It is true that they paid about $350,000 in cash. The greater part of this was paid to the holders of the bonds who were not represented by these purchasers.

All of the first mortgage bonds, however, are now in the possession of the Circuit court, and in the subsequent proceedings of this cause, under the mandate of this court, whatever equities these purchasers may have on account of the cash paid on the purchase of the property, can be amply and fully protected by orders and decrees, so that there may be no loss whatever to these purchasers.

They can suffer no hardship, for in the accounting that must be had in the cause now pending in the Circuit court, the equities of all parties will be adjusted by the chancellor.

Voorhees v. *Bank of U. S.*, 10 Peters., 475, does not support the argument of appellee's counsel.

In that cause the purchaser of the property at sale under the execution, was not a party to the record, was not a creditor, but was in every respect an innocent purchaser.

The defendants in the execution rested their case upon the proposition that a sale by order of a court of competent jurisdiction might be declared a nullity in a collateral action, if the record did not show affirmatively the evidence of the compliance with the terms prescribed by law in making such sale.

No appeal had been prosecuted from the original judgment, and, of course, there had been no reversal of such judgment.

The court held that if the judgment had been allowed to stand unappealed from, and unreversed, a purchaser acquired a substantial title which cannot be avoided collaterally.

In that case, however, the purchaser was a third party, and in no manner chargeable with the knowledge of the errors of the judgment.

Van Ness v. *Bank of U. S.*, 13 Peters., 15, was a bill of review, and the Circuit court held that the bill would not lie, and entered a judgment of dismissal. An appeal was prosecuted from that judgment, and sustained by the Supreme court.

Also in *Gray* v. *Brigadello*, 1 Wallace, 634, the appellee was an innocent purchaser, was not a creditor, nor in any manner a party to the record, and therefore his title to the property was protected.

Neither of these authorities have any bearing upon the question under discussion in this cause.

Appellee's counsel also contend that where a purchaser at a judicial sale is a bondholder, and is compelled, like any other buyer, to pay money to procure title, then he is a *bona fide* purchaser, and will hold as against a reversal, and cites in support of this proposition *McBride* v. *Longworth*, 14 Ohio State, 349.

The case in 14 Ohio was controlled by the statutes of that state then in force. The court says: "The statute "in force when this proceeding took place, provides, that "if any judgment or judgments in satisfaction of which "any land or tenements of the parties shall be sold, shall "at any time thereafter be reversed, such reversal shall "not affect or defeat the title of the purchaser or purchasers, but in such case restitution shall be made of the "moneys by the judgment creditor, for which such lands "or tenements were sold, with lawful interest thereon from "the day of sale."

We submit that, even had such a statute been in force in the State of Illinois at the time of the entry of this decree and the sale of the property thereunder, that such statute would not control the rights of the parties in the present cause.

This was not a sale of property under a judgment, but, on the contrary, under and in pursuance of the decree of foreclosure of the mortgage. No money whatever was paid to the trustees, Fish and Fosdick. Twenty-five per cent. of the bid was paid to the officer making the sale, and the greater part of that sum was paid directly to the bondholders, who were the real parties in interest.

Three-fourths of the purchase money was paid in the bonds of the company, which this court has held were not due or payable at the time.

No money has, therefore, passed to the trustees, and no restitution could be made by them to the defendants, either as owners of the property or as lien holders under the second mortgage.

In the case *supra*, the court cites and approves *Hubbell* v. *Administ'r, etc.*, 8 Ohio, where the court held "that if "the mortgaged premises were purchased by the mort-"gagee under decree of foreclosure and sale, that the "mortgagee should be regarded as a party merely, and "not as *purchaser* within the meaning of the statute. "But that was a case in which the sale was ordered at the "suit of the mortgagee alone, and for the sole purpose of "satisfying his debt. There were no other parties in in-"terest but the mortgagor and mortgagee, and as be-"tween them only, justice could be done after reversal."

So in the case at bar, the real parties are the railroad company and the mortgage bondholders, and as between these parties, certainly justice can be done in the subsequent proceedings of this cause in the Circuit court.

The court in *Jessup* v. *Racine Bank*, 15 Wis., 608, and *Manning* v. *McClurg*, 14 Wis., 351, cited by counsel for appellees on page 11 of his argument, did not hold that the title of the purchasing bondholders, did not fall with the reversal of the decree. That question was not in the record, and was not considered by the court. In this case there had been a decree of foreclosure by Jessup and

Raymond, trustees, and a sale of the mortgaged property under the decree. Jessup purchased the property in the interest of all the bondholders.

The bank of Racine was a judgment creditor of the railroad company, and it, and other judgment creditors moved to set aside the sale and the order confirming it.

The lower court sustained the motion, and upon appeal, the judgment was reversed by the Supreme court.

Appellee's counsel, in support of this last proposition, also cites *Racine & Miss. R. R. Co.* v. *Farmer's Loan and Trust Co.*, 49 Ill., 331; and *Same* v. *Same*, 86 Ill., 187.

We are unable to see that these cases have the slightest bearing upon the proposition under discussion.

There had been a foreclosure by the trustees of the mortgage executed to them in trust for the benefit of the bondholders, and upon appeal to the Supreme court, the decree in the main was sustained. The cause, however, was remanded for the purpose of an accounting, to ascertain certain credits that were claimed by the company.

The court says: "It will be observed that under the de-
"cree rendered when the cause was remanded the defend-
"ants had the right, if they so desired, to enter a motion
"to set aside the sale and master's deed, and for that
"object, the Circuit court, in passing upon the motion,
"might regard the decree as reversed."

In the further proceedings in the lower court, the railroad company came into court, and by its own motion, requested the court not to set aside the sale, but to have an account stated up to the time the master made the deed under the decree. The Supreme court says: "We can-

"not regard this action on their part in any other light "than a waiver of the right to insist upon a motion to va- "cate the sale. The railroad company had no right to "take steps in the case, acquiescing in the sale, and after- "wards repudiate that action and attempt to set the sale "aside."

None of these cases support the proposition that the purchasing bondholders can acquire a valid title to the mortgaged premises sold under a decree of foreclosure in the face of a reversal of such decree.

The record already submitted to this court shows that the property in controversy was purchased by the bondholders, who are not only intervenors in the cause, but also creditors of the company under the mortgage now being foreclosed in their interest and upon their demand.

We deny the proposition of appellees' counsel, that every presumption is against the theory, that the title of this railroad has, during the interval of five years between purchase and reversal, remained in the purchasers, or in the parties whom they represent as trustees.

On the contrary, we assert, that the presumption is so strong, that it may properly be considered as a fact, that these three purchasing bondholders represented nearly the entire class of first mortgage bondholders; that they were acting as trustees for such bondholders, and the title that they took under the purchase at the master's sale, was in trust for the use and benefit of all these bondholders, and that if a corporation was afterwards organized for the purpose of taking the title of the property purchased under the decree, it was organized by, and wholly in the interest of these first mortgage bondholders, and that they, as a matter of fact, constituted the corporation.

If new securities have been issued by this new corporation, then we assume that such securities are still held, or substantially held, by the old bondholders who have not acquired by reason of this foreclosure sale and purchase, any new rights or equities in the property in controversy.

If new bonds have been issued and have passed to other purchasers and holders, then in the subsequent proceedings in this cause in the Circuit court, such new bondholders would be substituted to all the rights and equities of the old bondholders, and be fully protected in the subsequent proceedings in the court below.

Mr. Crawford asserts that the intervenors and purchasers were not made parties to the record and the appeals, and that no citation was served upon them. Yet the record shows that both citations were served upon him as solicitor, and in every hearing in this court, save one, he has been present, defending the rights of these intervenors and purchasers, with marked energy and ability. It also now appears that, even the solicitors of the trustees in the Circuit court, especially represent the intervenors, as the holders of nearly all the first mortgage bonds.

Appellees' solicitor (page 16) admits that the prayer for an appeal embraced the deficiency decree of November 19, 1877, but says that it was not embraced in citation and bond. No objections, however, have been made by appellees, but, on the contrary, they have brought the record to this court. We have, it is true, filed our bill of review in the Circuit court, and believe our bill will be sustained, but at the present hearing the deficiency decree still stands, and execution may at any time be issued thereon. We therefore submit that as the record is now in this court, brought by the appellees themselves, and as it is admitted by all parties that this decree is erroneous, it should be reversed. There can be no good reason why this much of the controversy should not now he finally settled.

The present position of the principal parties to this record is as follows:

This court has held that at the time of filing the bill, the principal of the first mortgage bonds ($2,500,000) had not matured, and was not then, and is not now, due, and that at that time the railroad company was only in default for past due interest, in the sum of about $147,000.

The reversed decree found due upon these bonds, principal and interest, upwards of $3,000,000, and in default of the payment of this sum, the mortgaged premises were sold by the master. The purchasers were holders in part, and trustees of the balance of $2,328,000 of the first mortgage bonds. Of their bonds, under order of court of April 12, they surrendered to the master about $1,100,000 in discharge of their bid, and the court gave them a deficiency decree for the balance, or for the sum of $1,823,573.87. By order of the Circuit court, a deed of the property was executed and delivered to them, and they were put in possession.

Under the mandate of this court, the original cause is pending, and the trustees with the intervenors are proceeding to another final decree. Upon the written demand of these purchasers, claiming to be the owners of 2,328 of the first mortgage bonds, made on the 31st day of May last, the trustees have again declared the principal of all these bonds now due, and have filed their supplemental bill.

We do not now object to this proceeding. We insist that the full amount due the first mortgage bondholders, both of principal and interest, shall be speedily ascertained by reference and decree—that these purchasing bondholders, representing, as they admit, $2,328,000 of the principal of bonds, shall be treated and held as mortgagees in possession; that the reference shall not longer be delayed by reason of these orders entered in the cause, solely in execution of the main decree, now reversed and held for naught, and that the circuit court shall, with reasonable and proper diligence, settle by final decree all the equities between the parties to this controversy.

E. Walker,
Solicitor for Appellants.

OFFICE SUPREME COURT U.S.
FILED
OCT 4 1882
JAMES H. McKENNEY, Clerk.

16-47

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, A. D. 1882.

THE CHICAGO, DANVILLE AND VINCENNES RAILROAD COMPANY ET AL.,
Appellants,
vs.
WILLIAM R. FOSDICK AND JAMES D. FISH ET AL.,
Appellees.

APPELLANTS' ARGUMENT.

E. WALKER,
Solicitor for Appellants.

PRESS OF BEACH, BARNARD & CO., 104 RANDOLPH STREET, CHICAGO.

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WILLIAM R. FOSDICK AND JAMES D. FISH ET AL.,
APPELLEES.

STATEMENT.

Upon the appeal from the final decree of foreclosure, and the sale of the property of the appellant railroad company, this court reversed the decree and remanded the cause to the Circuit court.

The appellant also prosecuted an appeal from certain decretal orders entered in said cause subsequent to the entry of the final decree, and by stipulation of counsel and in conformity with the rules and practice of this court, both appeals were submitted at one hearing.

There was, in fact, but one appeal bringing to this court for review the final decree of foreclosure of the mortgage and for the sale of the property therein conveyed, and such other decretal orders as were subsequently entered in execution of the principal and final decree of foreclosure and sale.

The first decree disposes of the controversy between the parties, and determines and decrees all rights of property, as well as all issues presented in said cause.

The appeal from the decretal orders entered in said cause, on April 12th and 16th, 1877, was in fact but a part of the appeal from the final decree of foreclosure.

For substantial errors appearing in the record, this court has reversed the principal decree, and held that such errors vitiated all subsequent proceedings in the cause. The petition for rehearing was filed by the appellees in both cases, but was allowed only in the second case, or in the appeal from the orders of the court entered in said cause subsequent to the final decree of foreclosure. Upon this petition Mr. Justice MATTHEWS, delivering the opinion of the court, says:

"Since the announcement of our former opinion the "appellees, having filed a petition for rehearing, have "suggested that the decree brought up by this ap- "peal is not what it is recited to be, in the prayer "for appeal in the Circuit court, viz: the decree con- "firming the sale of the mortgaged property under "that of foreclosure and sale, but one rendered subse- "quently thereto, and merely in execution of it, and that "it is, therefore, not the subject of an appeal, and claim "that the present appeal should be dismissed for want of "jurisdiction.

"The appeal prayed for and allowed in the Circuit

" court is recited in the petition therefor, filed March 26,
" 1879, to be as follows:

" From the decree entered April 12, 1877, confirming
" the report of the sale of the property of the defendant
" railroad company. From the decree of April 16, 1877,
" ordering the delivery of the deed and possession of the
" property to the purchasers, Frederick W. Huidekoper,
" Thomas W. Shannon and John M. Dennison. From
" the decree entered in said cause on the 19th day of
" November, 1877, in favor of Frederick W. Huidekoper,
" Thomas W. Shannon and John M. Dennison and against
" the said Chicago, Danville and Vincennes Railroad
" Company for the sum of 1,808,646.46.

" The two decrees last named of April 16, 1877, and
" of November 19, 1877, do not appear in the record.
" An examination of the terms of the decree of April 12,
" 1877, shows that it is a decree confirming the report of
" the master upon a petition of the purchasers, Huide-
" koper, Shannon and Dennison, asking that their bid may
" be satisfied by a surrender of bonds and coupons with-
" out further cash payment, and upon that surrender, for
" a conveyance of the title to the property, and to be let
" into possession. What prior action of the court upon
" a report of the sale, had taken place, the transcript of
" the record before us does not disclose. Counsel for the
" appellees state that there was, in fact, a prior decree
" confirming the sale, rendered on February 26, 1877.
" from which no appeal was perfected, and produce in
" support of their statement what is called a supplemental
" transcript of the record, containing such a decree. This,
" however, we cannot at present consider, or act upon,
" further than to say that, in view of the suggestions
" made, and to enable the parties to present whatever

"questions arise upon the record as it is now before us, "or upon a complete record, when supplied upon the "appeal prayed for and perfected on March 26, 1879, "the application for a re-hearing is granted; and the de-"cree of this court rendered at the present term, so far "only as it reverses any of the decrees embraced in this "appeal, is to that extent and for that purpose set aside."

The original and supplemental records now bring to this court for review, the decretal orders of the Circuit court entered in said cause February 26, and April 12 and 16, A. D. 1877.

The record shows that the final decree of foreclosure was entered in said cause, on the 5th day of December, A. D. 1876, and that the master sold said property in pursuance of the terms of said decree, on the 7th day of February, 1877.

On the 16th day of February, the following notice was served upon appellant's counsel:

"*To E. Walker, Esq., Solicitor for R. R. Co.*

"Please take notice that we shall at 10 o'clock, A. M. "on Saturday, the 17th day of February, 1877, on behalf "of F. W. Huidekoper, Thomas W. Shannon and John "M. Dennison, apply to his Honor Judge Drummond, in "chambers, for an order confirming to them the sale of "the railroad track, franchises, &c., of the Chicago, Dan-"ville and Vincennes R. R. Co., and also for an order al-"lowing an immediate discharge of the bid and directing "the master to make a conveyance to them of such prop-"erty.

"Respectfully,

(Signed) "CRAWFORD & McCONNELL."

(Supplemental transcript, p. 2.)

It appears that appellant was here notified that appellees would apply to the judge of the Circuit court for an order confirming the sale of the property, and *also for an order allowing an immediate discharge of the bid, and directing the master to make a conveyance of such property.*

This notice was served upon appellant's counsel upon the 16th day of February. The master's report of sale had not then been filed, and was not returned to court until the 17th of February.

On the 17th of February, the court entered an order in said cause reciting that the master of chancery had filed his report of sale of said railroad and property ordered to be sold by him, and on motion of complainants' solicitors, it was *ordered* by the court "that said report and "sale be confirmed, unless objections be filed on or before "Friday morning next." Said order further recites "that "now comes Messrs. Huidekoper, Shannon and Dennison, purchasers of said road at said sale, and *file their* "*petition asking for a confirmation of said report, pur*-"*chase and sale, and for other relief*, and thereupon it is "ordered that the same be set for hearing on Friday "next." (Supplemental Record, page 3.)

This petition conforms to the notice served upon appellants' counsel upon the preceding day.

On the 23d of February, one Arthur O. Slaughter, claiming to be the owner of eighty bonds of the defendant company, filed his petition in said cause, praying for leave to interplead therein, and filed his certain objections to the report of the master.

On the 26th of February, the court entered a further order in said cause overruling the exceptions of Slaughter, and confirming the master's report. (Supplemental Record, p. 15.)

Upon the same day the petition of Huidekoper, Shannon and Dennison was referred to the master, to take evidence and report thereon. (Sup. Rec., p. 15.)

On the 23rd of February, appellant Elwell, as trustee under the second mortgage, filed his answer to the petition of Huidekoper, Shannon and Dennison, which was also referred to the master.

The master's report upon this petition was filed day of , and on the 12th day of April, the court entered its further order confirming such report.

This order recites that Huidekoper, Shannon and Dennison had paid to the master on said sale, the sum of $362,500 in gold, and that they were the holders and owners of 2,328 of the first mortgage bonds of the Illinois division of said company, and thereupon the court ordered that upon the surrender of said bonds with their accompanying coupons, and certificates of indebtedness, or convertible mortgage bonds as specified in said master's report, the said "Henry W. Bishop, master in chancery, "do make, execute and acknowledge and deliver unto the "said Frederick W. Huidekoper, Thomas W. Shannon "and John M. Dennison, a good and sufficient deed, conveying to them in fee simple, all and singular the property, rights and franchises, heretofore sold by him under a decree of this court herein. And on the delivery "of such conveyance as aforesaid, the said purchasers "shall be let into the possession of said premises and franchises so conveyed to them; and the receiver of this "court herein is hereby directed, upon exhibition to him "of such master's deed, to deliver over the possession "to said purchasers, of all and singular the Illinois divis- "of said Chicago, Danville and Vincennes Railroad Company, together with all its appurtenances, equipments

" and property of every kind and description." (Original transcript of Record, 14.)

On the 16th day of April, 1877, the said master in chancery made his further report to said court in said cause, reciting therein that, in pursuance of a decree of said court, entered in the said cause on the *5th day of December, 1876,* and of another order of said court entered in said cause on the *12th day of April, 1877,* he had executed to Huidekoper, Shannon and Dennison, a deed of all of the appellant's property, so sold under said decree, and presented the same to the court for its approval and confirmation. Said report further recites that in compliance with the order of said court, dated the *12th day of April, 1877,* the purchasers had surrendered to him 2,328 of the 2,500 first-mortgage bonds of the Illinois division of said road.

On the same day, the court entered a further decretal order in said cause, confirming said master's report, and further ordering that said deed be entered of record. (Sup. Rec., 16 and 17.)

The last decree in the cause was entered on the 19th of November, 1877.

This decree recites that it appearing to the court that the amount of the original decree in this cause is subject to a credit of $1,153,836.28, and the said petitioners, Huidekoper, Shannon and Dennison, as trustees, are entitled to a judgment over for the deficiency of the decree. It is ordered by the court that the said Frederick W. Huidekoper, Thomas W. Shannon and and John M. Dennison, trustees, take, have and recover of and from the Chicago, Danville and Vincennes Railroad Company the sum of $1,823,573.84, and that they have execution accordingly. (Supplemental Record, page 24.)

IN THE SUPREME COURT OF THE UNITED STATES.

Chicago, Danville and Vincennes Railroad Company and James W. Elwell,
Appellants,
vs.
William R. Fosdick, James D. Fish, Frederick W. Huidekoper, Thomas W. Shannon, John M. Dennison,
Appellees.

ERRORS ASSIGNED BY APPELLANTS.

Now come the appellants, the Chicago, Danville and Vincennes Railroad Company, and James W. Elwell, by E. Walker, their solicitor, and say that in the record and proceedings aforesaid, there is manifest error in this, to wit:

First. The court erred in entering the order in said cause of April 12, 1877, confirming the master's report, and in ordering the master, upon the surrender to him of the 2,328 first mortgage bonds, &c., to make, execute and deliver unto the purchasers, a deed conveying to them the property sold by him, under said final decree of foreclosure and sale, and in all other orders in execution of said last named decree.

Second. The court further erred in ordering that upon the delivery of such conveyance the purchasers should be let into the possession of said premises.

Third. The court erred in its decretal order confirming the master's report, and ordering the deed executed in pursuance of the decrees of said court, entered in said cause, on the 5th of December, 1876, and the 12th of April, 1877, to be entered of record, and delivered to the purchasers.

Fourth. The court erred in its decree entered in said cause, in the nature of a deficiency decree, in favor of the said Frederick W. Huidekoper, Thomas W. Shannon, and John M. Dennison, as trustees, and against the Chicago, Danville and Vincennes Railroad Company, one of the appellants herein, for the sum of \$1,823,573$^{\underline{87}}$, and in decreeing that they have execution therefor.

ARGUMENT.

Whatever may have been the condition of the record at the former hearing, all these decretal orders are now before the court for review. Appellee's counsel claim that this court has no jurisdiction to review upon appeal, any order entered in the cause subsequent to the order of February 26, 1877; that this was the final order, from which we did not perfect our appeal, and that "the "orders of April 12 and 16, and of November 19, are "simply decretal orders in execution of the previous "decrees of sale and confirmation."

If all these orders, save that of November 19, are not in execution of the principal, and, in fact, the final decree of foreclosure in the cause, then we mistake the issues presented by the records, and the unbroken line of authority of this court. Certain it is that the order of February 26, is not, in any sense, or under any construction, final. The petition of the appellees, Huidekoper, Shannon and Dennison, asks for a confirmation of the master's report of sale; also prays for a modification of the original decree, that they be relieved from making any further cash payments, and that upon the surrender of the bonds held by them, the master be ordered to execute and deliver to them a deed of conveyance of the property.

By the original decree the terms of payment of purchase money were as follows:

Twenty-five per cent. of the purchase money to be paid the master in chancery in cash at the time of sale. One half of the balance to be paid to the said master in cash, within three months from the day of sale, and the remainder to be paid to said master in cash within six months from the day of sale.

It was further ordered and decreed that the said master make report of said sale to the court, and that upon the confirmation thereof and *the full payment of the whole of the purchase money*, that the said Bishop, as master in chancery, convey to the purchaser or purchasers all of the said railroad, premises, property, etc., by good and sufficient deed therefor "which said deed when so made "and delivered shall vest in the grantee all the right, title, "interest and property, and right of redemption of said "railroad company of, in and to the said railroad, property, premises, appurtenances and franchises in fee "simple forever, and shall entitle said grantee to the possession thereof, and shall be a perpetual bar both in "law and equity against any and every claim of said railroad company, etc. * * * *"

It therefore appears that under the decree no title could pass from the railroad company under the sale made by the master, until the purchasers had fully paid the amount of their bid.

This payment the purchasers were not required to make until six months from the day of sale.

The court did not, by its order of February 26, direct the master to execute or deliver the deed, or do any other act affecting the rights or interests of the appellants. It was not "final so far as the title of the property under "the same is concerned, and did not cut off the equity of "redemption by the railroad company and junior mortgagees."

By the terms of the original decree, title was not to pass until the purchase money had been paid in full, and at the time of entry of order but twenty-five per cent. had been paid. The report of the master was a mere ministerial act, and the order of the court confirming it did not finally settle the rights of the parties. The order was merely interlocutory from which no appeal could be entertained.

It is also charged that we filed no exceptions to the master's report of sale. This is true, and it is also true that the time allowed by the general equity rules of this court was denied us.

Rule 83 is mandatory upon the master, and requires him to return his report to the clerk of the court as soon as it shall be ready. It also allows parties one month after the day of filing report to file exceptions thereto.

The notice that the appellees would apply for an order of confirmation of the master's report, and for an order directing the master to receive the bonds in discharge of the bid, and to execute the deed, was served upon appellants one day before the report had been returned to the clerk's office. On the following day, the 17th, the report was filed, also appellee's petition, which was set for hearing the following Friday, six days after filing the report and petition. On the 26th, nine days after the report was filed, the court entered a formal order overruling Slaughter's exceptions and confirming the report, and on the same day, by another order, referred appellee's petition for confirmation and leave to discharge the bid, and for deed of the property, "together with answers thereto," to the master to take proof, &c.

We think the only fair construction that can be given this order is, that the court only intended to overrule Slaughter's exceptions and confirm the report as to him. Appellants were given, by the rules, thirty days for filing exceptions, and could reasonably assume that the court had deferred the matter as to them until the coming in of the master's report upon appellee's petition.

The master made his report under such reference, and the court entered its order confirming the same, and ordering the transfer of the title and possession of the property, on the 12th day of April.

This was the first order in any manner affecting the legal rights of appellants, entered after the original decree of December 5, and this was simply a decretal order in execution of such original decree.

An appeal would not lie from the decretal order of February 26th. It is not a final order, does not determine any right of the parties, and does not divest title.

"A confirmation of a sale does not divest title, nor "does it have that effect nor dispense with the necessity "for the execution of the deed. The deed and the con- "firmation are both essential to the transfer of the title."

Freeman on Executions, Sec. 311.

In *Webster* v. *Hill*, 3 Sneed, page 333, held:

"That the effect of confirming the report of the sale "of real estate in chancery is nothing more than a com- "pletion of the contract and does not vest legal title.

"Where the sale is made upon a credit, it is usual "(as in the present case), to reserve the legal title until "the entire consideration money is paid. And in the "absence of such express reservation, the confirmation "of the sale would not have the effect to pass the legal "title. This must be done by decree or by deed in "pursuance of decree for that purpose."

In the original decree in this cause the court, in express terms, reserved the legal title until the entire consideration money should be paid.

Under the order of February 26th, the appellees acquired no legal title in the railroad property and appurtenances; but, on the contrary, nothing more than an equitable interest.

In *New Orleans* v. *Gaines*, 15 Wall., 625, this court held that: "It is only where the master, or the judge, in "acting upon his report, has departed from the order of "the judgment, or has omitted to enforce its provisions, "that a just objection can arise."

In the present case neither the master nor the judge departed from the order of the original decree until the entry of the decretal order of April 12th.

The order of February 26th is not final, and did not fully execute the original decree of foreclousure.

In *Blossom* v. *R. R. Co.*, 1 Wall., page 655, this court, in its opinion, says that it has frequently decided that where the act complained of was a mere ministerial duty necessary to carry out the decree which was being carried into effect, no appeal would lie.

In *Crosby* v. *Buchanan*, 23 Wallace, 453, it is held that, "cases cannot be brought to this court upon appeal in "parcels. We must have the whole case or none. The "court below must settle all merits before we can accept "jurisdiction. Appeals will lie, as has been frequently "held, when nothing remains to be done except to enforce "and give effect to what has been decreed; but until all "the rights of the parties have been finally passed upon "and settled, this cannot be a condition of a cause. "Nothing must be left below, when an appeal is taken, "but to execute the decree."

In *Butterfield* v. *Usher*, 91 U. S., 248, a motion was made to dismiss the appeal, for the reason the decree appealed from was not final. The chief justice, in delivering the opinion of the court, says that:

"Where the practice allows appeals from interlocutory "decrees, an appeal might lie from such a decree as this. "Such was the practice in New York, but our jurisdiction "upon appeal is statutory only. If some act of congress "does not authorize a case to be brought here, we cannot "take jurisdiction. Appeals cannot be taken to this court "from the Supreme court of the district, except after a "final decree in the case by that court. The decree in "this case not being final, we have no jurisdiction. We "do not wish to be understood as holding that a purchaser "at a sale under a decree in equity may not, at a proper "stage in the case, appeal from the decree affecting his "interests. All we do decide is, that there cannot be "such an appeal to this court until proceedings for the "sale under the original decree are ended."

The decretal order of April 12th is in the nature of a final decree in execution of the original decree of December 5th.

It determines the right of the property in controversy, and directs it to be delivered up by the appellant to the appellees.

By this order the master was directed to receive appellees' bonds in full payment of the purchase money, and was further directed to execute and deliver to the appellees a deed of conveyance of the property in controversy.

From such decretal order appeals have been uniformly held and sustained by this court.

In *Forgay* v. *Conrad et al.*, 6 Howard, U. S., page 201, a motion was made to dismiss the appeal because the decree of the court was not final. Chief Justice TANEY, delivering the opinion of the court, says:

" The question upon a motion to dismiss is whether " this is a final decree within the meaning of the acts of " congress? Undoubtedly it is not final in the strict tech-" nical sense of that term, but this court has not hereto-" fore understood the words 'final decrees' in this strict " and technical sense, but has given to them a more lib-" eral, and, as we think, more reasonable construction, " and one more consonant to the intention of the legisla-" ture.

In the case of *Whiting* v. *Bank of United States*, 13 Peters, 15, it was held that a decree of foreclosure and sale of mortgaged premises was a final decree, and the defendant entitled to his appeal without waiting for the return and confirmation of the sale by decretal order. And this decision is placed by the court upon the ground that the decree of foreclosure and sale was final upon the merits, and the ulterior proceedings, but a mode of executing the original decree. The same rule of construction was acted on in the case of *Michaud et al.* v. *Girod et al.*, 4 Howard, 553.

Justice Taney further says: " that when the decree de-" cides the right to the property in contest, and directs it to

"be delivered up by the defendant to the complainant, or di-
"rects it to be sold, or directs the defendant to pay a cer-
"tain sum of money to the complainant, and the complain-
"ant is entitled to have such a decree carried immediately
"into execution, a decree must be regarded as a final one
"to that extent, and authorizes an appeal to this court."

It is also held in *Whiting* v. *Bank of United States*, 13 Peters, page 15, that a decree of foreclosure and sale is to be construed as a final decree in the sense of a court of equity, and that the proceedings on that decree are a mere mode of enforcing the rights of the creditor; that the original decree of foreclosure and sale was final upon the merits of the controversy.

In *Ray* v. *Law*, 3 Cranch, 179, it was also held by this court that a decree of sale of mortgaged premises was a final decree in the sense of the acts of congress, upon which an appeal would lie to the Supreme court.

In *Beebe et al.* v. *Russell*, 19 Howard, 283, this court held that it had been "the object of the court at all times,
"though an accidental deviation may be found, to restrict
"cases which have been brought to this court, either by
"appeal or by writ of error, to those in which the rights of
"the parties have been fully and finally determined by judg-
"ments or decrees in the courts below; whether they
"were cases in admiralty, in equity or common law."

Justice WAYNE, in delivering the opinion of the court, says:

"We feel very confident no case has been decided by
"it when the question of the finality of a decree or judg-
"ment has been brought to its notice, in which the dis-
"tinction between final and interlocutory decrees has not

"been regarded as it was meant to be by the legislation of "congress, and as it was understood by the courts of "England and this country before congress acted upon the "subject. A decree is understood to be interlocutory "whenever an inquiry as to the matter of law or fact is "directed, preparatory to a final decision. When a decree "decides and disposes of the whole merits of the cause, "and reserves no further questions or directions for the "future judgment of the court, so that it will not be necessary to bring the cause again before the court for its "final decision, it is a final decree."

In the case of the Palmyra, 10 Wheaton, 502, the court held that a cause must be finally determined in the Circuit court, and that it could not be divided so as to bring up distinct parts of it.

In *Thompson* v. *Dean*, 7 Wallace, 342, the rule laid down in *Forgay* v. *Conrad* is recognized and followed.

It was also held in *French* v. *Shoemaker*, 12 Wallace, 98, that a decree of foreclosure and sale of mortgaged premises is a final decree as to the merits, and that the ulterior proceedings are but a mode of executing the original decree.

We find no authority for an appeal from a mere order confirming a report of master's sale. In the cases cited in support of such appeals, the records show that the master brought into court with his report of sale, a deed conveying the title of the property to the purchasers, and the order of the court not only confirmed the sale, but directed the delivery of the deed and the transfer of both title and possesion.

Sage v. *Railroad Company*, 96 U. S., p. 712, is cited by appellees as an authority in support of their position, that the present appeal should have been prosecuted from the decretal order of February 26, 1877. In the case cited the decree of foreclosure was entered on the 22nd of October, 1875, and was executed July 18, 1877, by a sale of the mortgaged property. On the 31st of August, 1877, an order was entered confirming the sale, and directing the master to convey the property sold to the Farmers' Loan and Trust Company, the purchaser, in trust for the parties interested in the purchase, under the provisions of the trust deed as defined in the original decree. At the same time a deed of conveyance executed by the master, was presented, and the court ordered that it be delivered to the Farmers' Loan and Trust Company and recorded. From this last order Sage and others appealed. Motion was made in this court to dismiss the appeal. The Chief Justice, in delivering the opinion of the court, says:

"The only order made August 31, 1877, which is in "the nature of a final decree, is that confirming the sale, "and directing a conveyance to the purchaser by the "delivery of the deed presented and approved, we have "often decided that a decree concerning a sale, if it is final, "may be appealed from. *Blossom* v. *Railroad Company*, 1st Wallace, 655; *Butterfield* v. *Usher*, 91 U. S., 246.

"In this case it is final, so far as title under the "same is concerned. It cuts off the equity of redemption "by the railroad company and junior mortgagees and "general creditors, except as provided in the decree of "October 22nd, and passes the title to the purchaser, "subject to certain trusts already fixed by the court, over "which the present appellants have control only through "their appeal from the former decree."

This case certainly does not authorize an appeal from the order of February 26. The authorities cited conclusively show that such decretal order is not in the nature ot a final decree; nor was any order entered in the cause by the circuit court after the decree of foreclosure, from which an appeal would lie, until the decretal order of April 12, 1877.

The decree of November 19, 1877, in favor of Huidekoper, Shannon and Dennison, as trustees, for $1,823,573.84, is a so-called deficiency decree. They were made parties to the record and proceedings with other bondholders, and were the purchasers of the property at the foreclosure sale, but certainly this does not authorize a deficiency decree under rule 92. The record shows that they were the holders and owners of 2,328 of the first mortgage bonds, and that upon their petition the court ordered the master to receive these bonds in payment of their bid, in lieu of cash. Their bonds were surrendered to the master, and by him deposited with the clerk of court under this order. They were not trustees for all the bondholders, but only for the bondholders who had become intervenors.

Under the rule, we submit that it was not competent for the court to enter a deficiency decree in favor of these parties, either as purchasers or as trustees for the intervening bondholders.

Appellees' counsel complain that in the opinion of this court reversing the decree of December 5, "no reservation is made looking to the protection of rights which "have been acquired under the accomplished sale, and "that everything, apparently, that was done in the lower "court after the original reference of the cause, is to be "now presented, precisely as though it had never existed."

This, we think, necessarily follows the reversal of the original decree of foreclosure and sale.

We cannot conceive how it is possible for the court, after reversing the original decree for error, to affirm the decretal orders subsequently entered by the Circuit court, solely in execution of the original decree, now reversed and set aside by the judgment of this court. For the many and manifest errors in that record the decree of foreclosure and sale was reversed and remanded to the Circuit court where it is now pending and undetermined.

The rights of purchasers to the property in controversy are not now before this court for hearing or adjudication.

Under the order remanding the cause, the Circuit court has full jurisdiction of the *res* and the parties, and we assume that that court will cheerfully extend to these purchasers whatever protection the law gives them, and that none of their legal rights will be denied them.

We do not think that these considerations should influence the judgment of this court in its review of the decretal orders of April 12 and 16, and the record connected therewith.

There should be no controversy in this or any other court over the legal rights of innocent purchasers of property at a sale under a decree, and before a reversal.

We admit that it is a rule of law in this court as well as in the courts of the State of Illinois, that the title of innocent purchasers to property acquired under an erroneous judgment, is not divested by its reversal.

We deny, however, that the principle contended for by appellees' counsel, that the doctrine "that all rights acquired under a judicial sale shall remain absolutely inviolate, notwithstanding subsequent reversal of the "decree," is a rule of property in the State of Illinois.

It is however, a rule that the title of *innocent* purchasers acquired under the sale, and before a reversal of a decree, are protected by the court; but the rule is equally as well settled, that parties to the record, whom the law presumes to have knowledge of all defects and errors in such records, can acquire no title under an erroneous decree, and upon reversal must make complete and full restitution to the plaintiffs.

The rule is well stated in *McJilton* v. *Love,* 13 Ill., 494. In this case there had been a reversal of the judgment for the sale of the property, and one of the principle questions before the court was, what was the effect of that reversal upon the rights of the parties.

The court says:

"It restored the entry of satisfaction, and left the judg-"ment discharged of record. It exonerated Love from "the payment of any part of the judgment to Field and "Hall. It left the judgment in this state without the least "foundation upon which to rest. The law is well settled, "that if a judgment is reversed, the parties are to be re-"stored to their original rights, so far as it can be done "without prejudice to third persons. If the plaintiff has "derived any benefit from the judgment he must make "as full restitution to the defendant as the circumstances "of the case will permit.

"If he has received payment in money from the defendant the latter can recover it back in an action of "*indebitatus assumpsit*. If he has obtained money by the "sale of the property of the defendant, the latter may recover it as so much money had and received to his use. "If he has purchased in property under the judgment, "and still retains the ownership, the defendant may recover the specific property in the appropriate action."

This rule is followed in *Wadhams* v. *Gay*, 73 Ill., 415, and, so far as we have any knowledge, is the uniform rule in this state.

The same rule was enforced in *Galpin* v. *Page*, 18 Wallace, 350 and 373.

In this case, the court held that the decree being reversed, the title acquired by Page, the purchaser at the commissioner's sale, falls with it. He was one of the attorneys of the plaintiff, Gay, and the law imputes to him knowledge of the defects in the proceedings. * * * *

The protection which the law gives to the purchasers at judicial sales is not extended in such case to the attorney of the party, who is presumed to be cognizant of all the proceedings.

The court further says that in many of the states it is held that the purchaser at a judicial sale loses his title upon a reversal of the judgment, or decree, under which the sale was made, where such purchaser is a party to the judgment or decree.

It seems now to be the rule in most, if not all the states, that a party in whose favor a judgment is rendered, must on its reversal make restitution of all things acquired thereby.

It is held that if parties to a decree purchase property at a sale under the decree, they do so at the risk of losing title by a subsequent reversal of the judgment.

Freeman on Executions, Sec. 347.
Gott v. *Powell*, 41 Missouri, 416.
Buchanan v. *Clark*, 10 Gratt., 164.
Reynolds v. *Harris*, 14 Cal., 667.
Corwithe v. *State Bank*, 15 Wis., 289.
Toogood v. *Franklin*, 27 Iowa, 239.
Hubbell v. *Broadwell*, 8 Ohio, 127.
McGoon v. *Scales*, 9 Wallace, 30.

This being the law, it requires no argument to satisfy the court that Huidekoper, Shannon and Dennison were parties to the record and parties to the original decree.

All of the counsel for appellees admit this fact in their argument in support of their petitions for rehearing.

They say, "that when the case was pending in the "Circuit court, for reasons which that court deemed adequate, certain bondholders were allowed to intervene and "become parties, and their petition was sent to the master's "office."

"It appears from the exceptions to his report that such "parties introduced evidence," and the "appellant made "an unsuccessful attempt to suppress the same."

Indeed, one of such arguments was filed by the solicitor for these intervening bondholders. Among these intervening bondholders we find Huidekoper, Shannon and Dennison, who, as a matter of fact, were, as claimed by them, trustees for all other intervening bondholders, and, as such, obtained from the court the deficiency decree of November 19, 1877. They have also been recognized as proper parties by this court.

The claim of these intervenors, heretofore made as proper parties complainant in the original cause, and their standing in court as such, was recognized and sustained by this court in the case of *Fosdick* v. *Schall*, 99 U. S., 235, and in the case of *Huidekoper et al.* v. *Locomotive Works*, 99 U. S., 258.

All of these purchasers were parties to the record, and actively participated in all the proceedings in the original cause, and have the same knowledge of all errors in the record and decree, as have their co-appellees Fosdick and Fish. Neither of these parties could acquire any valid title to the property sold under the decree of foreclosure and sale.

Respectfully submitted,
E. Walker,
Solicitor for Appellants.

OFFICE SUPREME COURT U.S.
FILED
OCT 11 1882
JAMES H. McKENNEY, Clerk

1647

Supreme Court of the United States,

October Term, 1882.

No. 21.

The Chicago, Danville & Vincennes Railroad Company, and others, *Appellants.* *vs.* Wm. R. Fosdick, James D. Fish, and others, *Appellees.*	Appeal from Circuit Court of the United States for the Northern District of Illinois.

BRIEF FOR APPELLEES.

HENRY CRAWFORD,
Solicitor for Appellees.

WASHINGTON:
Gibson Brothers, Printers.
1882.

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1882.

The Chicago, Danville & Vincennes Railroad Company and James W. Elwell,
vs. *Appellants,*
No. 21
William R. Fosdick, James D. Fish, Frederick W. Huidekoper, and others,
Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

ARGUMENT IN BEHALF OF APPELLEES.

In accordance with the terms of a stipulation between counsel, the supplemental transcript of record which was filed at the last term in support of the petition for rehearing, is to be considered as a part of the record upon these appeals.

A short recital of the different decrees and orders of the circuit court, together with their several dates, will more satisfactorily than any other method, illustrate the nature of the orders now under review.

December 5, 1876. The final decree of foreclosure and sale was rendered. (Record in 82 pages, 179 to 193.)

February 7, 1877. The master struck off the property to Huidekoper, Shannon and Dennison for $1,450,000.

February 17, 1877. The master reported the sale and the payment by the purchasers of $362,500 in gold, in accordance with the terms of the final decree requiring immediate payment of one-quarter of the accepted bid. (Orig. Record, p. 6.)

February 17, 1877. The court entered the following order *nisi:*

"Now comes Henry W. Bishop, the master in chancery " of this court, and files his report of sale of said railroad " and property ordered to be sold by him herein, and on " motion of complainants' solicitors it is ordered by the " court that said report and sale be confirmed unless objec- " tions be filed thereto on or before Friday morning next." (Sup. Record, p. 3.)

February 23, 1877. Slaughter, a bondholder, filed objections to the sale. (Sup. Record, p. 4.)

Neither the railroad company or Elwell at any time filed any objections to the sale or the master's report thereof.

February 26, 1877. The only objections to the sale were disposed of by the following final decree of confirmation: (Sup. Record, p 15.)

" Now on this day *come again the parties by their several* " *solicitors,* and also comes Arthur O. Slaughter by his " solicitor, and the court being sufficiently advised, over- " rules the exceptions filed by said Slaughter to the master's " report of sale, and *does in all things confirm the sale to*

" *said Frederick W. Huidekoper, Thomas W. Shannon and* " *John M. Dennison.*

" And thereupon the said Slaughter prays an appeal to " the Supreme Court of the United States from *said order* " *of confirmation*, which is allowed upon a bond with sufficient security for one thousand dollars, being filed within " sixty days to answer for costs, but said bond not to operate " as any supersedeas."

February 26, 1877. The following separate order was entered *after the above decree of confirmation :*

" On motion, the petition of Frederick W. Huidekoper, " Thomas W. Shannon, and John M. Dennison, the purchasers, filed February 17, 1877, asking for the immediate " discharge and payment of their bid as therein set forth, " together with the answers thereto, are referred to Henry " W. Bishop, master, to take evidence and report thereon." (Sup. Record, p. 15.)

April 12, 1877. The court entered a decretal order, confirming the master's report made on the reference of the purchasers' petition, reciting that the $362,500 already paid in cash by the purchasers, would more than pay all the costs, allowances, and the *pro rata* share due out of the sale proceeds on all the bonds not held by the purchasers. The order required the master on the surrender by the purchasers of 2,328 first mortgage bonds and coupons to execute and deliver a conveyance to the purchasers, and the receiver on presentation of such conveyance was ordered to deliver them possession. (Orig. Record, p. 14.)

Neither the railroad company or Elwell ever filed any objection to the master's report which was the basis of this order, nor did either in any manner object to the entry of the order as made.

April 16, 1877. The master reported the surrender of the 2,328 bonds and coupons, and submitted to the court for its approval the draft of the conveyance he had prepared. (Sup. Record, p. 16.)

April 16, 1877. The court made an order thereupon confirming such report and deed and spreading the same at large upon the record. (Sup. Record, p. 17.)

Neither the railroad company or Elwell ever made any objection to this report or order.

November 19, 1877. The judgment for deficiency was rendered. (Sup. Record, p. 24.)

It may be instructive to note that the appeal prayed at the foot of the foreclosure decree of December 5, 1876, was suffered to lapse, and the reversal ordered at the last term was based upon an appeal under the citation of *October* 30, 1878. (Record in 82, p. 196, and decision on motion to dismiss.)

On *March* 26, 1879. Appeals were prayed from the decrees of April 12, 1877, April 16, 1877, and November 19, 1877. (Orig. Record, p. 15.)

Neither of the present appellants ever prayed or perfected any appeal from the decree of February 26, 1877, wherein the sale was "in all things confirmed."

To procure the reversal of the orders of April 12 and 16 it will be necessary for the appellants to establish—

1st. That there is error in the orders.

2nd. That they are of such a nature as to be within the reviewing power of this court.

Neither of these propositions can be sustained. Both the orders now complained of are based upon reports of the master. The record shows that the appellants did not file any exception to such reports or make any objection to the entry of the orders.

It is the well established rule that exceptions to a master's report cannot be taken for the first time in the appellate court.

Canal Co. v. *Gordon*, 6 Wall., 561.
New Orleans v. *Gaines*, 15 Wall., 624.
Hudgins v. *Kemp*, 20 How., 45.
Kinsman v. *Parkhurst*, 18 How., 289.

The order of April 16, 1877, is a mere judicial audit of the master's account and an approval of the draft of the conveyance. Both the action of the master and the court on the receipt of the bonds and delivery of the deed were mere ministerial acts, done in execution of the original foreclosure and the confirmation decrees.

Complaint is made of the order of April 12, because it directed the master to receive bonds and coupons in satisfaction of the bid and authorized the discharge of the bid and a conveyance before the expiration of the six months provided by the terms of the original decree.

This action was in no sense a departure from the decree of foreclosure, nor did it injure appellants in any way, nor can they assign error thereon.

By the decree of Dec. 5, 1876, all bids were to be cash—one-quarter at the time of sale, and the balance in two equal payments within three and six months. It also provided that the proceeds of sale, after full discharge of costs, expenses, and allowances should be applied on the first mortgage bonds and coupons.

The purchasers paid the quarter of their bid in cash. After full confirmation, the inquiry in the master's office established that such sum of $362,500 would pay all the costs expenses, allowances, and the *pro rata* share coming to all bondholders other than the purchasers. The latter then proved up in the master's office their $2,328,000 of first mortgage bonds and coupons.

The decree did not prohibit the full payment of the bid or a conveyance without waiting the six months' limit and the delay for that period could in no way benefit appellees. The action of the circuit court was in substance allowing the purchasers to at once pay in court the full amount of their bid and then paying out upon 2,328 of the bonds the proper dividend to which they were entitled.

The practice adopted was in every respect regular and in accordance with so many precedents in this court that authority is unnecessary.

The present argument for reversal is not based on any error claimed to be inherent in the orders or decrees involved directly in this appeal. The sole claim is in substance: there has been a reversal of the original decree of December

5, 1876 and for that reason alone the appellants are now entitled to the rescission of all orders or decrees made subsequent thereto so as to place everything in exactly the position occupied prior to the decree of Dec. 5, 1876.

If the orders of April, 1877, are in law capable of a distint appeal, they must be judged as any other and the error to reverse them must be found in the record on such appeal and not in the result of another appeal or in any former decision of the court.

Sage v. *R.R. Co.*, 96 U. S., 714.

On the question; did the circuit court commit error in rendering the orders of April, 1877, embraced in this appeal, the decision of this court at the last term in another appeal cannot be invoked at all; when these decretal orders were rendered the foreclosure decree was in full force.

The recent reversal of the latter cannot have such a retroactive effect as to enable appellants to suggest error on these appeals.

This principle was announced by this court in the case of Bank of Washington *vs.* Bank of United States, (6 Peters, 16 :)

"The reversal of the judgment cannot have a retrospect-
" ive operation, or make that void which was valid when
" done.

"Suppose it had become necessary for the marshal to sell
" some of the property of the bank to satisfy the execution;
" the purchaser would have acquired a good title under the
" sale, although the bank might have forbid the sale accom-

" panied by a declaration of an intention to bring a writ of
" error. This would not revoke the authority of the officer,
" and while that continued whatever was done under the
" execution would be valid."

Had the purchasers not been bondholders it would hardly be contended at this bar that the reversal of the foreclosure decree would have any effect upon the title acquired by such purchaser while the decree was in full force, or would justify the reversal of any of the decretal orders now under discussion.

Shortly stated, therefore, the appellants ask for reversal of these decrees because the purchasers were some of the bondholders who had intervened to speed the cause.

If the relation of those persons to the record was such that the necessary result of the reversal of the foreclosure decree is to annul the sale, destroy the order of confirmation and retake the title, no matter how it is at present held or encumbered, it would still be true that the only remedy of appellant is by application in the lower court.

This court is not in possession of such facts as to the state of title, interests and encumbrances at the time of reversal, that it can make any intelligible disposition of such a controversy.

The appellants' position as to the purchasers is, that they were parties to the record and the original decree, whom the law presumes to have knowledge of and holds responsible for defects and errors. The rule of law advanced is that such parties "can acquire no valid title under an erroneous " decree."

We deny both the statement and the doctrine.

The purchasers were not parties to the record in such sense as to render any such doctrine applicable.

They did not bring the action or in any way control it. They were not even made co-complainants with the trustees; their names never appeared in the title of the action or any of the pleadings, or in the decree; they were not embraced in the citation or bond when the appeal was taken from the decree of Dec. 5, 1875. They were three bondholders of a numerous class, and their only appearance in the main case controversy was by a petition with many of their co-bondholders asking to speed the cause. They were not "plaintiffs" within the meaning of the rule.

The better reason for the enforcement of the doctrine of restitution in case of a reversal, by an execution plaintiff, who purchases and still holds title without the intervention of other rights, is "because he pays nothing." His judgment being vacated, he has parted with no value.

Corwith v. *B'k of Ill.*, 15 Wis., 291.

The case of these purchasers presents a wide distinction. By their accepted bid they subjected themselves to the payment in cash of $1,450,000. For the discharge of such bid they could have been coerced by attachment. They paid besides their bonds and coupons the sum of $362,500, which went to discharge the debts of the corporation, evidenced by allowances, and the *pro rata* share of other bondholders, to all which recoveries and demands the purchasers were absolute strangers.

They were compelled to become responsible for the full bid and to pay in cash the one-quarter precisely as any stranger.

Having in view the policy of the law to encourage the amplest competition at such sales and to support titles acquired thereunder in good faith and for value, even in case of reversal, there can be no question but that the persons who made this purchase came fully within the protection of the principle, which has been so repeatedly upheld by this court:

" If a judgment is reversed for error it is a settled princi-
" ple of the common law cœval with its existence that the
" defendant shall have restitution only of the money; the
' purchaser shall hold the property."

Voorhees v. *B'k of U. S.*, 10 Peters, 475.

" For if the sale had been completed under the decree
" the title of the purchasers would not have been over-
" thrown or invalidated even by a reversal of the decree,
" and consequently the title of the defendants to the land
" would have been extinguished, and their redress upon the
" reversal would have been of a different sort from that of
" a restitution of the land sold."

Whiting v. *B'k of U. S.*, 13 Peters, 15.
Gray v. *Brigardello*, 1 Wall., 634.

Whenever the purchaser at a judicial sale is compelled like any other bidder *to pay money* to procure title, then he is a *bona fide* purchaser and will hold as against reversal, although he may be one of a number of lien holders for whose benefit the action was being prosecuted.

McBride v. *Longworth*, 14 Ohio S., 349.
Gossun v. *Donaldson*, 18 B. Mon., 237.

As was stated in the opinion in *Galpin* v. *Page*, (18 Wall., 373,) this seems to be more consistent with the declared policy of the law regulating judicial sales.

In two cases, wherein railroads were sold under foreclosure and purchased by some of the bondholders, it was expressly decided that the title remained perfect under the confirmed sale, although the original decree of foreclosure was reversed.

In *Jesup* v. *Racine Bk.*, (14 Wis. 331,) a decree of foreclosure was reversed, and in same case (15 Wis., 608) it was ruled that the title of a purchasing bondholder did not fall by reversal.

To the same effect are the two cases of *B. & M. R.R.* v. *Farmers' L. & T.*, 49 Ill., 333.
Ibid. v. *Ibid.*, 86 Ill., 187.

The doctrine of the brief that such purchasing bondholders could "acquire no title under an erroneous decree" is utterly pernicious. Having paid their money and the judicial sale having been fully executed by conveyance, the title in their hands prior to reversal, was free of taint and they could pass as perfect a title to a stranger grantee as though the latter had been himself the purchaser at the master's sale.

All the authorities even those cited in the brief attest this doctrine.

The reversal will restore the land purchased by the execution creditor "if it is still held by him."
Corwith v. *B'k of Ill.*, 15 Wis., 291.

"If he still continues to hold and there are no new rights "intervening."

Hubbills v. *Broadwell*, 8 Ohio, 127.

"If he still retains the ownership."

McJilton v. *Love*, 13 Ill., 494.

"The restitution is of everything which is still in the "hands of his adversary."

Gott v. *Powell*, 41 Mo., 416.

In *Guiteau* v. *Niseley*, (47 Ill., 433,) and *Wadhams* v. *Gay*, (73 Ill., 415,) the highest court of Illinois expressly decided that against a subsequent reversal, a stranger buying property from a party to the record, which had been by the latter purchased at a judicial sale in his own behalf, was as much protected as though he had bought directly from the master.

It is clear that this court is in no way informed of the present state of title. Every presumption is against the theory that the title to this railway has during the interval of five years between purchase and reversal, remained unencumbered in the first purchaser's hands "with no new rights "intervening." Appellants make no claim that such is the case. Notwithstanding such a condition of affairs they ask a reversal of decretal orders which may overthrow or greatly cloud the title and rights of many persons who have in good faith acquired them before any reversal. When such rights have intervened the judicial authority can only be exercised consistently with protection to them.

The system of equity practice in the Federal courts authorizes an appeal directly from an order of confirmation in the case of mortgage foreclosures. If this carries any meaning, it is that when clear right belongs to the mortgagor to prosecute an appeal directly from an order confirming the sale of his property and suspend the operation of the decree by a proper bond, it is intended to constitute such order of confirmation *res judicata* upon every subject connected with the validity of the sale, as to notice, fraud, adequate price, or other matter. If the mortgager takes no exception to the report of sale and prosecutes no appeal from the final decree of confirmation, the title thus acquired cannot in any way be impeached or overthrown even by a subsequent reversal of the decree of foreclosure. The decree of confirmation unexcepted to and not appealed from frauds is the *recorded and full assent of the mortgagor* to the sale as made.

It is his consent that from that time forth, even in case of reversal of the main case, the fund arising from the sale shall stand in lieu of the property itself. The final decree of confirmation, unless that is appealed from and reversed, will always constitute a complete bar to any reclamation of the property conveyed under its order.

" It is among the elementary principles of the common " law that whoever would complain of the proceedings of " any court must do it in such time as not necessarily to delay his adversary in the assertion of his right."

Whenever a time is appointed or a limitation established, " if that time elapses, common justice requires that what a " defendant cannot do directly in the mode pointed out

" by law, he shall not be permitted to do collaterally by " evasion."

Voorhees v. *B'k of U. S.*, 10 Peters, 469.

Confirmation cures all precedent defects except want of jurisdiction.

The order of February 26, 1877, whereby the sale of the railroad was "in all things confirmed," is now before the court for inspection.

It is said the time fixed by the standing rules to except to the master's report was not given appellant.

The rule quoted only regulates the practice where there has been a reference to the master to take evidence and report. It has never before been contended that it relates to sales made under decrees. Even if the court evaded or annulled the rules, the only method of attack would have been to have objected to the decree of confirmation, then appealed and assigned that error.

It is also urged that the decree of February 26, although it confirmed the sale, did not also order a conveyance to be made to the purchaser, and for lack of this latter provision the decree loses its quality of finality.

The suggestion is without force. The acceptance by the court of the reported bid closed the bargain and the inchoate right of the purchaser to have a conveyance on the payment of his bid became absolute. Nothing remained for the court to do in its judicial capacity. The original decree of foreclosure in explicit terms provided, for the master on full payment to execute a conveyance and for the receiver to deliver possession on presentation thereof. Those provisions came into full force on the confirmation being made and there was no necessity to recite them again.

Indeed, the law implies the execution of a proper conveyance as the necessary and ministerial duty of the master in the case of a confirmed sale, and no such order is necessary.

Koontz v. *North Bank*, 16 Wall., 201.

It is sufficient to say with regard to this confirmation that the report, notice, the order *nisi* and final decree were all drafted in exact accord with the practice approved by this court in *Williamson* v. *Berry*, 8 How., 546.

This decree therefore settled the right and constituted the final decree of confirmation, from which alone an appeal could be prosecuted to annul the title acquired thereunder.

" For relief against the sale resort can only be had to an " appeal from the decree of confirmation."

Sage v. *R.R. Co.*, 96 U. S., 714, and cases cited.

This decree is not in any way before this court for review. When the appellants, for the first time, March 16, 1879, prayed appeals from the later orders, the limitations of the act of Congress expressly prohibited this court from reviewing or reversing this decree of Feb. 26, 1877.

It is now sought to collaterally impeach and annul this final decree by attempting an appeal from two mere ministerial orders which were in execution of and a necessary result of the decree of confirmation.

The jurisdiction of this court on appeal being statutory, and these two orders of April 12 and 16 not being final, within the act of Congress, they cannot be the subject of separate appeal or made the basis for the practical annulment of a prior final decree from which no appeal has been prosecuted.

Ex parte Flipper, 94 U. S., 348.
Early v. *Rogers*, 16 How., 599.
Callan v. *May*, 2 Black, 541.

Although the prayer for an appeal embraced the deficiency judgment of Nov. 19, 1877, this was not in any way embraced in the citation of appeal or in the bond to support it.

According to the practice it would seem not to be regularly before the court unless a mere prayer for appeal brings it here, without proper citation or bond.

If, however, it should be deemed to be properly here for consideration it is submitted that the brief of appellant points out no error. The recovery in the name of the bondholders instead of the trustees is a substantial compliance with the spirit of the rule and in any event did not work any injury to the appellants.

If the reversal of the foreclosure decree of itself abrogates this deficiency decree, the proper method of relief is by an entry to that effect in the lower court.

We submit the court has no jurisdiction over any of these appeals. If it has jurisdiction they should be affirmed.

HENRY CRAWFORD,
Solicitor.

OCT., 1882.

OCT 9 1882
H. McKENNEY

1647

IN SUPREME COURT of the UNITED STATES,

OCTOBER TERM, A. D. 1882.

CHICAGO, DANVILLE & VINCENNES RAILROAD COMPANY AND OTHERS,
Appellants,
vs.
WILLIAM R. FOSDICK AND JAMES D. FISH, TRUSTEES, AND FREDERICK W. HUIDEKOPER, THOMAS W. SHANNON AND JOHN M. DENNISON,
Appellees.

Suggestions on behalf of Messrs. W. R. Fosdick and James D. Fish, Trustees.

By **MELVILLE W. FULLER.**

BEACH, BARNARD & CO., LEGAL PRINTERS, 104 RANDOLPH STREET, CHICAGO.

IN SUPREME COURT of the UNITED STATES,

OCTOBER TERM, A. D. 1882.

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Appellants,
vs.
WILLIAM R. FOSDICK AND JAMES D. FISH, TRUSTEES, AND FREDERICK W. HUIDEKOPER, THOMAS W. SHANNON AND JOHN M. DENNISON,
Appellees.

Suggestions on behalf of Messrs. W. R. Fosdick and James D. Fish, Trustees.

MAY IT PLEASE YOUR HONORS:

My clients, Messrs. Fosdick and Fish, are the trustees named in the trust deed of the Chicago, Danville and Vincennes Railroad Company, dated March 10, 1869.

At the request of bondholders, they filed their original bill of complaint to foreclose said trust deed on the 27th day of February, 1875, and their amended bill on the 14th day of September, A. D. 1875. Decree for foreclosure was rendered on the 5th day of December, A. D. 1876, which decree was reversed by this court at the October term, A. D. 1881.

After the rendition of the decree and in execution thereof the property in question was sold by the master who reported thereon, his report of sale being filed Saturday, February 17, A. D. 1877. (Printed transcript, pages 6 to 12.)

According to this report the master seems to have pursued the directions contained in the decree, and the report was ordered (and the sale mentioned therein) to be confirmed, unless objections were made thereto on or before the Friday succeeding, which would be February 23.

At the same time, as appears from the record and from the said order of the 17th of February, Messrs. Huidekoper, Shannon and Dennison, purchasers of said road at the sale on behalf of a large number of holders of bonds secured by the trust deed, filed a petition asking for the confirmation of the report, purchase and sale, and for other relief, which was set for hearing on said February 23.

Thus the formal order *nisi* would not in itself become absolute, except upon the disposition of said petition.

On the 23rd day of February, one Arthur O. Slaughter excepted and objected to the confirmation of the sale for reasons stated by him in a petition, to be found on pages 4 to 9 of the supplementary transcript. These exceptions of Arthur O. Slaughter were overruled February 26, A. D. 1877 (printed supplementary transcript, page 15), and the sale to Messrs. Huidekoper, Shannon and Dennison confirmed, so far as those exceptions of Slaughter were concerned, but on the same 26th day of February (printed supplementary record, page 15), the petition of Messrs. Huidekoper, Shannon and Dennison, filed February 17, was referred to the master to take evidence and report thereon, prior to which and on the 23rd day of February, defendant Elwell had filed an answer to said petition of Messrs. Huidekoper, Shannon and Dennison, which is to be found on page 12 of printed transcript of record.

On the 12th day of April, an order of confirmation of the master's report on the petition of Messrs. Huidekoper, Shannon and Dennison, was entered, together with directions for delivery of the deed, upon surrender of bonds, etc., as therein provided. (Page 14, printed transcript of record.) On the 16th day of April (supplementary transcript, page 16), the master reported the surrender to him of the bonds held by Messrs. Huidekoper, Shannon and Dennison, being 2,328 in number, and leaving 172 bonds not surrendered, and the delivery of the deed accordingly, which report was confirmed and the deed approved. (See supplementary record, page 17.)

On the 19th day of November the court entered what purports to be a deficiency decree (supplementary record, page 24) in favor of Huidekoper, Shannon and Dennison, as trustees, for $1,813,573.84.

From these decrees of April 12, April 16 and November 18, 1877, the railroad company prayed the pending appeal.

The decree of foreclosure having been reversed by this court, the trustees, Messrs. Fosdick and Fish, are placed in this position:

On the one hand the representatives of 2,328 bonds having become the purchasers under the alleged sale, insist that the orders in relation to said sale should be affirmed or the appeals therefrom dismissed.

On the other hand, the holders of 172 bonds who did not participate in the purchase and who could have received, as the record shows, under the sale, only a portion of the amount due on their bonds, insist that as the decree of foreclosure has been reversed, they are entitled to the benefit of a re-sale, in order to obtain in effect the balance due to them and interest.

It seems to the trustees that as to the bond-holders who became purchasers, they demand an affirmance of the sale *qua* purchasers and not as bondholders, and that the minority of the bondholders have the right to demand, so far as the trustees are concerned, that the trustees shall do nothing to prevent them from getting the full benefit of their security or the balance of their money, if they can do so.

At all events, the trustees have desired me on their behalf to bring to the attention of the court the somewhat embarrassing position in which they are placed, without intending, however, to prevent the purchasers from asserting whatever rights they may have in the premises, which the trustees have no wish to do, nor any power, inasmuch as the final orders of confirmation, delivery of deed, and the deficiency decree were all entered in view of, and substantially upon, the intervening petition of Messrs. Huidekoper, Shannon and Dennison, and are to be treated as their decrees.

It appears to the trustees that the orders of April 12, 1877, April 16, 1877, and November 19, 1877, are decrees upon the petition of Messrs. Huidekoper, Shannon, and Dennison, occupying the attitude of purchasers and not bondholders, and as such reviewable irrespective of the order of February 26.

The order of February 26 disposed of nothing except the exceptions filed by the petitioner Slaughter; but supposing no such had been filed, it is not perceived that the order of February 26 was anything more than the usual order confirming the sale, which amounted only to approving the action of the master in following out the directions of the decree. The decree of foreclosure and sale was the final decree, and there was no necessity of waiting for the return and confirmation of sale by decretal order before an appeal was allowed; nor was there any necessity of prosecuting an appeal from that order in order to overthrow the sale which fell by the reversal of the decree of foreclosure.

In *Walker* v. *Schum*, 42 Ill., page 462, the court say: "That the decree is the sentence of the law authoitatively "announced, and when obeyed by the master the legal effect and consequences contemplated by law are accomplished, and when such is the case the design of the law "must be effectuated," and it is in that case pointed out that in Illinois after the adoption of the act of 1842, giving redemption from sales of mortgaged premises, the general practice had been for the master not to report until the delivery of the deed upon the expiration of the time fixed for redemption; and while it is true that it has been held in the federal courts that redemption under the statute cannot be insisted upon in cases of railroad foreclosures and, therefore, the master's report should be made at once: yet the confirmation of such report is nothing but the completion of the execution of the original decree, and stands or falls with the disposition of that final order.

Forgay v. *Conrad*, 6 Howard, U. S., 201.

When, however, upon the petition of purchasers, the court entered orders changing the manner in which the property should be paid for, ordering the delivery of the deed at once, cutting off the equity of redemption by the company, junior mortgagees, and general creditors, and passing the title to the purchasers, then an appeal lay in order to test the questions arising between the new parties and the other parties to the suit, who considered themselves aggrieved by such orders.

In *Butterfield* v. *Usher*, 91 U. S., 248, the court, through the chief justice, say: "We do not wish to be understood as holding that a purchaser at a sale under decree "in equity may not at a proper stage of the case appeal "from a decree affecting his interests. All we do decide "is that there cannot be such an appeal to this court until the proceedings of the sale under the original decree "are ended."

"Either party," says Judge CLIFFORD, in *Blossom* v. *Railroad Company*, 3 Wallace, 207, "may object to the "report, and the purchaser himself, who becomes a party to "the sale, may appear before the court, and if any mistake "has occurred may have it corrected. He therefore becomes a party to the proceeding, and may represent "and defend his own interest, and may be compelled by "process of the court to comply with the terms of the "contract."

Messrs. Huidekoper, Shannon and Dennison, who had before appeared and become parties to the proceedings (*Huidekoper* v. *Locomotive Works*, 99 U. S., 258), appeared again directly to represent and defend their interests as purchasers, and to object to and appeal from any orders the court entered in matters affecting those interests, if they believed themselves to have just cause of complaint. The same remedies were open to the other parties.

The decrees under review are in effect their decrees, and to be so treated.

The questions involved being reviewable here without reference to the order of February 26, it is submitted that, inasmuch as the main decree has been reversed, the orders in question must take the same course. This would restore the case to the position that it occupied before the decree of December 5, 1876, which has been reversed by this court.

The opinion of the court in the main case holds that the principal sum secured by the trust deed was not due, yet under the orders of April 12 and 16, and November 19, 1877, the Circuit court directed the master to receive and he did receive bonds upon the bid of Messrs. Huidekoper, Shannon and Dennison, and the court then gave a deficiency decree over.

These proceedings, of course, are only sustainable upon the basis of the foreclosure decree, which is no longer in existence.

The trustees are bound to proceed again to decree, if entitled to it, upon amended or supplemental bill, and it appears to them that, inasmuch as that duty is clearly imposed upon them, it is not unreasonable to suggest that the orders of April 12 and 16 and November 19, 1877, should also be cleared out of the way so as to furnish no impediment to their action under such decree as may hereafter be rendered.

Respectfully submitted.

MELVILLE W. FULLER,

For Messrs. Fosdick and Fish.

OFFICE SUPREME COURT U.S.
FILED
OCT 11 1882
JAMES H. McKENNEY, Clerk.

16

SUPREME COURT of the UNITED STATES,

October Term, A. D. 1882.

THE CHICAGO, DANVILLE and VINCENNES RAILROAD COMPANY et al.

vs.

WILLIAM R. FOSDICK et al.

Appeal from the
Circuit Court of the
United States,
Northern District
of Illinois.

No. 21.

Argument for Intervening Bondholders and Purchasers.

By LAWRENCE, CAMPBELL & LAWRENCE.

PRESS OF BEACH, BARNARD & CO., 104 RANDOLPH STREET, CHICAGO.

SUPREME COURT of the UNITED STATES,

October Term, A. D. 1882.

THE CHICAGO, DANVILLE and VINCENNES RAILROAD COMPANY et al. *vs.* WILLIAM R. FOSDICK et al.	Appeal from the Circuit Court of the United States, Northern District of Illinois.

The court will remember, on being reminded of the fact, that there were two cases, each bearing the above title, on the docket of the last term, one numbered 82, the other numbered 173. The first involved the validity of a decree of sale upon a railroad mortgage made by the appellant. The second was supposed to involve the validity of the decree of confirmation. A judgment of reversal was pronounced in both. A petition for re-hearing was then filed and the court ordered a re-hearing in No. 173, but declined to make such order in No. 82. We now submit the following brief in the case where the re-hearing was granted, and which is No. 21 on the docket of this term.

STATEMENT OF CASE.

The record upon which the case was decided at the last term was extremely defective, and necessarily led to a misapprehension of very material facts on the part of the court. A supplemental record was submitted to the court with the petition for rehearing, and, by agreement of counsel, this supplemental record is now filed as a part of the record of the cause in this court.

The decree of foreclosure and sale was entered December 5, 1876. The appeal upon which the case was argued in this court was not allowed until November, 1878.

In the meantime the master, in pursuance of the decree, sold the mortgaged property on the 7th day of February, 1877, and reported the sale to the court February 10. This report appears in the transcript on file (pages 6 to 9 of printed copy.)

The purchasers were Frederick W. Huidekoper, Thomas W. Shannon and John M. Dennison.

February 17, 1877, an order *nisi* was entered that the sale should be confirmed unless exceptions were filed by the 23d.

This order was omitted from transcript on file, but may be found in the supplemental record, page 3.

Neither the railroad company nor Elwell, nor Roberts, the appellants, filed any exceptions whatever to the report, but exceptions were filed on February 23, 1877, by A.

O. Slaughter, who claimed to be a bondholder and entitled so to do.

These exceptions are not set out in the original transcript, but may be found in the supplemental record, page 4.

The same day affidavits were filed in reply. (Supplemental Record, pages 10-13.)

FEBRUARY 26, 1877. All the parties and Mr. Slaughter appeared; the exceptions were heard and overruled, *and the sale confirmed.*

This order is not contained in original transcript, but may be found in the supplemental record, page 15.

Mr. Slaughter prayed an appeal from this order confirming the sale; the appeal was allowed by the court, but it never has been perfected, or attempted to be.

NO OTHER APPEAL WAS EVER PRAYED OR ALLOWED AS TO THIS DECREE OF CONFIRMATION.

The appeal which was before this court in No. 173 of the last term, was not attempted until March 26, 1879, *which was more than two years after the decree of confirmation*, and does not purport to be an appeal from that decree, but from subsequent decrees entered April 12, 1877, April 16, 1877, and November 19, 1877. (See prayer for appeal, Original Record, page 15; also citation and bond, Original Record, pages 15 and 18.)

The first two of these orders were made upon an intervening petition of the purchasers, Huidekoper, Shannon, and Dennison, Filed February 17, 1877. (Original Record, page 5.)

This petition alleged that they were the accepted ders at the mortgage sale at the sum of $1,450,00 and had paid in the sum of $362,500, gold, as required by the terms of the decree; that they were holders and owners of 2,315 of the bonds, and that the money paid in by them was sufficient to pay all preferred claims, and to pay the *pro rata* per bond that would be distributed upon bonds other than their own, so that all the unpaid balance of purchase money would, if paid in, be paid back to them under the provisions of the decree of foreclosure, and prayed to be allowed to surrender their bonds to the master in payment of the balance of their bid, instead of paying in the gold, and drawing it out again, (Original Record, pages 5 and 6.)

February 26, 1877. The sale having been confirmed by a separate order, as shown above, this petition was referred to the master. (Supplemental Record, page 15.)

February 23, 1877. James W. Elwell, trustee in the convertible mortgage, filed an answer to this petition. (Original Record, pages 12, 13.)

The master reported that the facts stated in the petition were true; and,

April 12, 1877. The court passed an order reciting the finding of the master, confirming his report, and allowing the purchasers to put in their bonds in lieu of gold for the balance of the purchase money, and directing him to deliver to the purchasers a deed upon the bonds being so surrendered. (Original Record, pages 14 and 15.)

This order, however, had nothing to do with confirmation of the sale which had been confirmed the previous February, as above shown.

April 16, 1877. The master reported that 2,328 *the* ads had been surrendered to him by the purchasers, but excat he had delivered a deed to them, of whch he set v. (Supplemental Record, page 16.)

The same day. The court entered an order approving the report and ordering the deed to be recorded. (Supplemental Record, 17.)

NOVEMBER 19, 1877. The court entered a deficiency decree against the railroad company. (Supplemental Record, p. 24.)

The decrees appealed from or attempted to be appealed from are those of April 12 and April 16 and November 19, 1877.

This is apparent from the prayer for appeal, the appeal bond and citation. (Original Record, pp. 15 and 18.)

The appeal was prayed before his Honor, the circuit judge, on the 26th of March, A. D. 1879, more than two years after the decree of confirmation entered February 26, 1877, but within two years after the orders professed to be appealed from, to wit: those of April 12 and 16 and November 19, 1877.

It will be noticed, however, that the circuit judge did not in terms allow the appeal; he merely approved the bond in the following language: "Form and amount of bond "approved, but not conceding there is the right of appeal "from the orders named." (Original Record, p. 17.)

It may well be doubted whether any appeal would lie, especially upon the orders of April 12 and 16, which were merely executory orders, based upon a decree of confirmation which remained in full force and not appealed from during the two years allowed by law for such appeal.

It will be noted, however, that no errors have ever been assigned upon the record in number 173, and the transcript shows no exceptions taken in the court below to the orders appealed from.

ARGUMENT.

The order of confirmation, from which no appeal has ever been taken, was made February 26, 1877, and is as follows. It is to be found on page 15 of the supplemental record:

"MONDAY, Feb. 26, A. D., 1877.

"UNITED STATES CIRCUIT COURT—NORTHERN DISTRICT OF ILLINOIS.

"Present: Hon. Thomas Drummond, Circuit Judge.

"Wm. R. Fosdick and James D. Fish
v.
"The Chicago, Danville & Vincennes
"Railroad Co. *et al.*
} *In Chancery.*

"Now, on this day, come again the parties, by their "several solicitors, and also comes Arthur O. Slaughter, "by his solicitors; and the court being sufficiently advised, "overrules the exceptions filed by said Slaughter to the "master's report of sale, and does in all things confirm "the sale to said Frederick W. Huidekoper, Thomas W. "Shannon and John M. Dennison.

"And thereupon the said Slaughter prays an appeal to "the Supreme Court of the United States from said order "of confirmation, which is allowed upon a bond, with "sufficient security, for one thousand dollars, being filed "within sixty days, to answer for costs, but said bond not "to operate as any supersedeas."

No appeal was ever perfected upon this order. It is not before this court, and cannot now be brought here. It must stand unchanged. The sale was confirmed by it, and must remain confirmed.

The orders that *were* appealed from, and which are now before this court, bear date respectively April 12, 1877; April 16, 1877; and November 19, 1877. The appeal on all these orders was prayed March 26, 1879, a date one month too late for an appeal from the order of confirmation, which was entered February 26, 1877.

The order of April 12, 1877, was as follows (page 14 of original record):

"UNITED STATES CIRCUIT COURT, NORTHERN DISTRICT
"OF ILLINOIS.

"THURSDAY, April 12, A. D. 1877.

"Present, Hon. Thomas DRUMMOND, judge.

"William R. Fosdick and James D. Fish
"*v.*
"The Chicago, Danville and Vincennes
"Railroad Company *et al.*
} *In Chancery.*

"It appearing to the satisfaction of the court from the "report of the master, made and filed on the petition of "the purchasers, Frederick W. Huidekoper, Thomas W. "Shannon and John M. Dennison, that there has been paid "to said master on said sale three hundred and sixty-two "thousand five hundred dollars ($362,500.00) in gold; "that the said purchasers have also proven up before "said master two thousand three hundred and twenty-"eight (2,328) of the two thousand five hundred (2,500) "first mortgage bonds of the Illinois division of the Chi-"cago, Danville and Vincennes Railroad Company, to-

"gether with the coupons and certificates of indebtedness "or convertible mortgage bonds thereto attached and be-"longing.

"And it further appearing from said report that there "remains unpaid of the several preferred claims hereto-"fore allowed by this court not to exceed one hundred "thousand dollars ($100,000.00), and that such sum of "three hundred and sixty-two thousand five hundred "dollars ($362,500.00) in gold paid into court will more "than satisfy all the preferred claims and the costs and "expenses of the cause, and allowances to the master, "trustees, and their solicitors, and also pay the pro rata "share due on the amount of the bid unto the holders of "the one hundred and seventy-two first mortgage bonds, "and their coupons and certificates of indebtedness other "than those held and offered now to be surrendered on "their said bid by the purchasers.

"It is therefore ordered that the said master's report "be confirmed, and that the surrender unto him by said "purchasers on the two thousand three hundred and "twenty-eight (2,328) first mortgage Illinois division "bonds of the Chicago, Danville and Vincennes Railroad "Company, together with their accompanying coupons "and certificates of indebtedness or convertible mortgage "bonds, as specified in said master's report, the said "Henry W. Bishop, master in chancery, do make, exe-"cute, acknowledge, and deliver unto said Frederick W. "Huidekoper, Thomas W. Shannon, and John M. Denni-"son, a good and sufficient deed, conveying to them in "fee simple all and singular the property, rights, and "franchises heretofore sold by him under the decree of "of this court herein.

"And on the delivery of such conveyance, as aforesaid, "the said purchasers shall be let into possession of said "premises and franchises so conveyed to them, and the "receiver of this court herein is hereby directed, upon "exhibition to him of such master's deed, to deliver over "the possession to said purchasers of all and singular the "Illinois division of said Chicago, Danville and Vincennes "Railroad Company, together with all its appurtenances, "equipments, and property of every kind and description.

"And it is further ordered, that out of the moneys in "court the clerk be directed to forthwith pay all and "singular the claims heretofore allowed by this court "against the fund, taking proper vouchers therefor, and "that he do also, upon demand, pay in gold coin a dividend "to the one hundred and seventy-two (172) outstanding "first mortgage bonds and their accompanying coupons "and certificates of indebtedness, at and after the rate of "five hundred and twenty dollars ($520) in gold coin on "each of said one hundred and seventy-two (172) bonds, "with the coupons and certificates of indebtedness there-"to belonging, all such dividend payments to be made in "accordance with the terms of the decree of December "fifth, 1876, as to priorities and deductions for payments "made on any such coupons or certificates of indebtedness since October, A. D. 1873.

"And the remainder of the fund in court shall be re-"served to abide the further direction of the court as to "its distribution."

The court will observe that this order was made not on the master's report of sale which had been confirmed two months before, but upon the master's report of the petition of Huidekoper, Shannon and Dennison, the purchasers at the sale, to the effect that they might be permitted to satisfy a part of their bid with the bonds held by them. It is the report in favor of said petition that is confirmed by the order of April 12, 1877, and the order further directs that on the delivery of said bonds, the master shall make a deed and deliver possession. But the court will observe that this order says not one word as to the sale which had been confirmed as above stated, two months before.

The order of April 16, 1877, is to be found on page 17 of supplemental record, and is merely an order approving the master's deed.

The order of March 19, 1877, page 24 of supplemental record, is merely a deficiency decree.

Those are the only orders now before the court, and not one of them is an order or decree confirming the sale.

I.

OUR FIRST POSITION IS THAT THE ORDER OF APRIL 12, 1877, ALLOWING BONDS TO BE USED TO A CERTAIN EXTENT IN PAYMENT OF THE PURCHASE MONEY, AND DIRECTING THE MASTER TO MAKE A DEED, AS ALSO THE ORDER OF APRIL 16, 1877, APPROVING THE DEED, ARE MERELY INTERLOCUTORY ORDERS, EXECUTORY OF THE DECREE CONFIRMING THE SALE, AND ARE THEREFORE NOT APPEALABLE.

The decree of confirmation settled the rights of the purchasers and of the parties. No further order was necessary to enable the master to execute a deed according to the original decree. That he should report to the court the making of the deed, and take an order of approval was very proper, but in no wise necessary to the validity of the proceedings or the title of the purchasers.

Walker v. *Schum*, 42 Ill., 464.

The order defining to what extent the master shall be permitted to take bonds in lieu of money was, certainly, a mere discretionary order on the part of the court; and the paragraph in the same order directing the master to make the deed, when the bonds were paid in, was a mere form, conferring on the master no new power, and affecting nobody's rights.

In *Callan* v. *May*, 2 Black., 543, this court, through Mr. Chief-Justice TANEY, said:

" This appeal must be dismissed. The application of " May for process to obtain possession of the land was " not a suit in which any final decre could be passed so as " to give to either party a right to appeal. The proceedings in the Circuit Court, after its decree was affirmed in the case of *Statham, Smithson & Co.* v. *Callan, et al.*, were nothing more than proceedings required " to carry into execution that decree. And when May " had become the purchaser, and the sale was ratified by " the court, and he had complied with the conditions of " the sale, he was entitled, as a matter of course, to " the process of the court to put him in possession. The " order of the court directing process to issue is not " such a final order or decree in a case as the act of " 1789 contemplates. It is nothing more than an order " of process to carry into execution a final decree " already passed in a case in which May was not a " party."

This language seems decisive of this case.

Here "the sale was ratified by the court," and the purchaser "was entitled, as a matter of course," to the deed of the master, as he was there to the process of the court to put him in possession. Indeed the master's deed here was precisely analogous to the process of the court in that case, and in substance, "nothing more than an order "of process to carry into execution a final decree already "passed." Substituting "master's deed" for process, and the paragraph might have been written for the present case.

In *Blossom* v. *Railway Co.*, 1 Wallace, 657, this court used the following language, speaking through Mr. Justice MILLER:

> "Although this court has frequently decided that where "the act complained of was a mere ministerial duty, "necessarily growing out of the decree which was being "carried into effect, no appeal would lie, it has never decided that in *no* case arising after a decree, which is "final only in the sense which would allow it to be appealed, will an appeal be allowed from an order of the "court, however it might affect important interests, or "decide matters not before the court when the first decree was rendered."

The decrees now before the court do *not* affect any important interests, or decide any matters not before the court when the decree of confirmation was rendered, except as to how far bonds might be taken in place of money.

We submit, on the authority of these cases and the plain reason of the thing, these orders of April 12 and April 16 were not appealable, and the appeals taken upon them must be dismissed.

II.

OUR SECOND POSITION IS, THAT IF THESE ORDERS OF APRIL 16 AND 19 WERE APPEALABLE, THERE IS NO ERROR IN THEM, ON ACCOUNT OF WHICH THIS COURT WILL REVERSE THEM.

There is certainly no error in any of these orders, except such as necessarily proceeds from the error which this court has found in the decree of foreclosure and sale. We mean by this, that if that decree had been affirmed by this court at its last term, there would have been no pretense for reversing the decretal orders now before the court. We do not understand it even to be claimed that there is any intrinsic error in any one of them, but only that they are erroneous, because they were made in the execution of an erroneous decree.

When this court reversed these orders at the last term, it was not known to the court that a decree of confirmation had been entered on the 26th day of February, 1877, from which no appeal had ever been taken or could be taken, and which, therefore, had become the immutable law of the case, settling forever the rights of the parties so far as they depended upon that decree. The knowledge of that decree was brought to the court for the first time by the petition for a rehearing and the supplemental record, and the rehearing having been granted, the question is, shall either of these orders be reversed, the decree of confirmation standing irreversible?

We respectfully submit that whatever might have been the action of the court in regard to these orders, if the decree of confirmation had been brought here on appeal in apt time, and subjected to the jurisdiction of this court, as the case now actually stands, these three orders, or at least the first two, must stand unreversed.

The appellants, by failing to appeal from the decree of confirmation entered February 26, 1877, allowing it to stand until the time for appeal is gone, have lost the right to ask this court to reverse the orders of April 12 and 16 made in execution and pursuance of the decree of February 26.

It must be borne in mind that the decree of February 26, confirming title in the purchasers is, and must forever remain in full force and effect, and we respectfully submit, it necessarily follows that, inasmuch as that decree must forever remain in force this court will not reverse subsequent orders establishing no new rights, but made simply in process of its execution. Inasmuch as the title to the property purchased must necessarily remain under the decree of confirmation in the purchasers at the sale, we submit this court will not cloud their title by reversing these formal orders of April 12 and 16 merely on the ground of error in the decree of sale. The appellants by their own laches in failing to bring before this court the decree of confirmation within two years after its rendition, have lost the right to ask this court to examine these decrees, which were simply made as incidental to the former. Indeed, we do not think we err in asserting that if no deed had yet been made by the master, it would be proper for him to make one at this time, and that the court would so order in view of the fact that this property was sold, while the decree of sale was in full force and effect; that the purchasers paid their money as required by the decree; that the sale was reported to the court, and after hearing exceptions thereto, was fully confirmed, which decree of confirmation stands unreversed and incapable of reversal; in view of all these facts, notwithstanding the reversal by this court of the decree of sale, the purchasers would still be entitled to their deed under the decree of confirmation. That decree of confirmation settled the right of the purchasers at the sale, subject to the right of appeal on the part of appellants, and the appellants not having availed themselves of that right, the decree of confirmation settled the rights of the purchasers forever. It entitled them to a deed from the master without further order on the part of the court, and these appellants are no longer in a position to ask of the court a reversal of whatever order was made in the court below directing the execution of the deed. In the case of *Sage* v. *R. R. Company*, 96 U. S., 714, this court, speaking through Mr. Chief Justice WAITE, uses the following language:

"We have often decided that a decree confirming a "sale, if it is final may be appealed from. *Blossom* v. *R.* "*R. Company*, 1 Wall., 655; *Butterfield* v. *Usher*, 91 U. "S., 246. In this case it is final, so far as title under the "sale is concerned. It cuts off the equity of redemption "by the railroad company, and the junior mortgagees and "general creditors, except as provided in the decree of "October 22; and passes the title to the purchaser, sub-"ject to certain trusts already fixed by the court, over "which the present appellants have control only through "their appeal from the former decree. *No reversal of* "*any order hereafter made will necessarily divest this* "*title.* The proceedings will hereafter relate only to "the disposition of the property acquired by the pur-"chase and the proceeds of the sale. *For relief against*

"*the sale, resort can alone be had to an appeal from the*
"*decree of confirmation.*"

This seems to be conclusive of the present case: "*For* "*relief against the sale, resort can alone be had to an appeal from the decree of confirmation.*" So here, as there has been no appeal from the decree of confirmation, and can be none, this court will not undertake to unsettle the sale, or cast a cloud upon it by reversing the order subsequently made in pursuance of said decree. In order to show that the order of confirmation settled the question of title and the right of the purchasers to the master's deed, we quote, in addition to what was said by this court in the 96th U. S., the following from the opinion of the court in *Williamson* v. *Berry*, 8th How., 546:

"The usual mode of selling property under a decree or "order in chancery, is a direction that it shall be sold with "the approbation of a master in chancery, to whom the "execution of the decree in that particular has been con-"fided. It matters not whether the sale is public or priv-"ate, by a person authorized to make it. Not that the ap-"probation of the master in either case completes the "title to a purchaser. It is only the master's approval of "the sale, and is one step toward a purchaser getting a "title. Before, however, a purchaser can get a title, he "must get a report from the master that he approves the "sale, or that he was the best bidder, accordingly as "the sale may have been made either privately or at "auction. That report then becomes the basis of a mo-"tion to the court, by the purchaser, that his purchase "may be confirmed. Notice of the motion is given to the "solicitors in the cause, and confirmation *nisi* is ordered "by the court, to become absolute in a time stated, unless "cause is shown against it. Then, unless the purchaser

" calls for an investigation of the title by the master, it is " the master's privilege and duty to draw the title for the " purchaser, reciting in it the decree for sale, his approval " of it, and the confirmation by the court of the sale, in " the manner that such confirmation has been ordered."

From both of these cases we submit it is abundantly clear that it is the decree of confirmation of sale which settles the rights of the parties, and terminates the action of the court in proceedings of foreclosure, and no merely formal order subsequently made in regard to the making or approval of deeds, will be a subject for consideration in an appellate court, when the decree of ~~confirmation~~ is not before the court, and cannot be brought before it by reason of the lapse of time.

So, in the opinion of the Court last term, in the case under consideration, the Court said, through Mr. Justice MATTHEWS:

" But as in cases of strict foreclosure, so in case of " sale, the equity of the mortgagor as against the mort- " gagee, is not exhausted *until sale actually confirmed:* for " if at any time prior he should bring into court, for the " morgagee, the amount of the debt, interest and costs, he " will be allowed to redeem."

In this paragraph the Court considers the decree of confirmation as ending the litigation, and settling the rights of the parties.

We respectfully submit that as the decree of confirmation stands, and must stand, the decrees now before the court rest upon it, and are incidental to it, and should be affirmed.

LAWRENCE, CAMPBELL & LAWRENCE,
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